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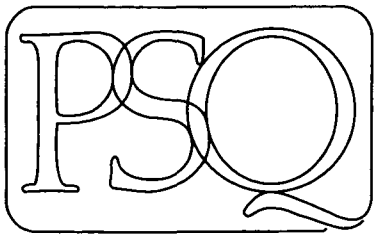

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THE JOURNAL OF PUBLIC AND INTERNATIONAL AFFAIRS

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From the Editor:

In this issue . . .

FAREED ZAKARIA reflects on the factors present in the Middle East that have provided for the rise of Islamic fundamentalism and a complete absence of democracy. He prescribes policy measures for the United States and the leaders of the Middle Eastern regimes in order to best transition the region to one where at least constitutional liberalism may flourish.

JACK N. RAKOVE examines the conventional arguments made on behalf of preserving the state-based system of presidential elections and concludes that the familiar defenses of the electoral college are fallacious. If one person-one vote is the fundamental norm of modern democracy, there is no persuasive rationale that can legitimate the leveraging effect of the "senatorial bump" on the voting weights of differently sized states.

JUDITH A. BEST analyzes the electoral vote system in terms of six complex and interdependent goals for presidential elections and concludes that the current system, although not perfect, meets them all. She then examines six alternative plans for presidential selection and concludes that they would deform, rather than reform, our presidential elections.

MIA M. BLOOM demonstrates why Palestinian public opinion increasingly supports suicide terror against Israeli civilians and military personnel. Suicide bombings have become a method of recruitment and mobilization for radical Palestinian organizations. They serve at one and the same time to attack the hated enemy and give legitimacy to outlier militant groups who compete with the Palestinian Authority for leadership.

RANDALL STRAHAN and DANIEL J. PALAZZOLO discuss the leadership style of former U.S. House Speaker Newt Gingrich. They show that Gingrich's own goals and understanding of leadership significantly influenced his activist leadership style and that he both shaped the context in which he led and altered the expectations of his followers.

KARL K. SCHONBERG looks at the congressional authorizations of force since September 11, which he claims are best understood as the latest manifestations of a sixty-year pattern of growth in the president's power to make war. He argues for a return to the intent of the Framers of the Constitution in the exercise of war powers.

TREVOR L. BROWN and CHARLES R. WISE scrutinize Ukraine's constitutional court. Their analysis suggests that in order for the constitutional court to work, it must have extensive judicial review powers, its jurisdiction must be broad enough to encompass separation of powers issues, and neither the executive nor the legislative branch should be able to easily control the court through the appointment process.

RICHARD L. RUSSELL reviews several recent books that put the spotlight on perennial issues in American civil-military relations, especially as they pertain to the threat, use, and management of force. He argues that these books will help inform politicians, soldiers, scholars, and citizens of the inherent tensions in healthy civil-military relations as well as the pitfalls and dangers of imbalanced civil-military relations.

DEMETRIOS JAMES CARALEY

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Islam, Democracy, and Constitutional Liberalism

FAREED ZAKARIA

It is always the same splendid setting, and the same sad story. A senior U.S. diplomat enters one of the grand presidential palaces in Heliopolis, the neighborhood of Cairo from which President Hosni Mubarak rules over Egypt. He walks through halls of marble, through rooms filled with gilded furniture—all a bad imitation of imperial French style that has been jokingly called "Louis Farouk" (after the last king of Egypt). Passing layers of security guards, he arrives at a formal drawing room where he is received with great courtesy by the Egyptian president. The two talk amiably about U.S.-Egyptian relations, regional affairs, and the state of the peace process between Israel and the Palestinians. Then the American gently raises the issue of human rights and suggests that Egypt's government might ease up on political dissent, allow more press freedoms, and stop jailing intellectuals. Mubarak tenses up and snaps, "If I were to do what you ask, Islamic fundamentalists will take over Egypt. Is that what you want?" The conversation moves back to the latest twist in the peace process.

Over the years, Americans and Arabs have had many such exchanges. When President Clinton urged Palestinian leader Yasser Arafat to agree to the Camp David peace plan that had been negotiated in July 2001, Arafat reportedly responded with words to this effect: "If I do what you want, Hamas will be in power tomorrow." The Saudi monarchy's most articulate spokesman, Prince Bandar bin Sultan, often reminds American officials that if they press his government too hard, the likely alternative to the regime is not Jeffersonian democracy but a Taliban-style theocracy.

FAREED ZAKARIA has published articles on democracy and Islam in scholarly journals. Dr. Zakaria is now Editor of *Newsweek International* and a columnist for *Newsweek*. His most recent book, *The Future of Freedom: Illiberal Democracy at Home and Abroad*, is being translated into fifteen languages.

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The worst part of it is, they may be right. The Arab rulers of the Middle East are autocratic, corrupt, and heavy-handed. But they are still more liberal, tolerant, and pluralistic than those who would likely replace them. Elections in many Arab countries would produce politicians who espouse views that are closer to those of Osama bin Laden than those of Jordan's liberal monarch, King Abdullah. Last year, the emir of Kuwait, with American encouragement, proposed giving women the vote. But the democratically elected Kuwaiti parliament—filled with Islamic fundamentalists—roundly rejected the initiative. Saudi crown prince Abdullah tried something much less dramatic when he proposed that women in Saudi Arabia be allowed to drive. (They are currently forbidden to do so, which means that Saudi Arabia has had to import half a million chauffeurs from places like India and the Philippines.) But the religious conservatives mobilized popular opposition and forced him to back down.

A similar dynamic is evident elsewhere in the Arab world. In Oman, Qatar, Bahrain, Jordan, and Morocco, on virtually every political issue, the monarchs are more liberal than the societies over which they reign. Even in the Palestinian territories, where secular nationalists like Arafat and his Palestine Liberation Organization have long been the most popular political force, militant and religious groups such as Hamas and Islamic Jihad are gaining strength, especially among the young. And although they speak the language of elections, many of the Islamic parties have been withering in their contempt for democracy, which they see as a Western form of government. They would happily come to power through an election, but then would set up their own theocratic rule. It would be one man, one vote, one time.

Compare, for example, the wildly opposite reactions of state and society to the November 2001 videotape of a gloating bin Laden found by U.S. armed forces in an al-Qaeda hideout in Kabul. On tape, bin Laden shows an intimate knowledge of the September 11 attacks and delights in the loss of life they caused. Most of the region's governments quickly noted that the tape seemed genuine and proved bin Laden's guilt. Prince Bandar issued a statement: "The tape displays the cruel and inhumane face of a murderous criminal who has no respect for the sanctity of human life or the principles of his faith." Abdul Latif Arabiat, head of Jordan's Islamic party, the Islamic Action Front, asked, "Do Americans really think the world is that stupid that they would believe that this tape is evidence?"

In most societies, dissidents force their country to take a hard look at its own failings. In the Middle East, those who advocate democracy are the first to seek refuge in fantasy, denial, and delusion. The region is awash in conspiracy theories, such as those claiming that the Israeli intelligence service, Mossad, was actually behind the World Trade Center attacks. In a CNN poll conducted across nine Muslim countries in February 2002, 61 percent of those polled said that they did not believe that Arabs were responsible for the September 11 attacks. Al-Jazeera, the first independent satellite television station in the region, which has an enormous pan-Arab audience, is populist and modern. Many of

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its anchors are women. It broadcasts news that the official media routinely censor. And yet it fills its airwaves with crude appeals to Arab nationalism, anti-Americanism, anti-Semitism, and religious fundamentalism.

The Arab world today is trapped between autocratic states and illiberal societies, neither of them fertile ground for liberal democracy. The dangerous dynamic between these two forces has produced a political climate filled with religious extremism and violence. As the state becomes more repressive, opposition within society grows more pernicious, goading the state into further repression. It is the reverse of the historical process in the Western world, where liberalism produced democracy and democracy fueled liberalism. The Arab path has instead produced dictatorship, which has bred terrorism. But terrorism is only the most noted manifestation of this dysfunction, social stagnation, and intellectual bankruptcy.

The Middle East today stands in stark contrast to the rest of the world, where freedom and democracy have been gaining ground over the past two decades. In its 2002 survey, Freedom House finds that 75 percent of the world's countries are currently "free" or "partly free." Only 28 percent of the Middle Eastern countries could be so described, a percentage that has fallen during the last twenty years. By comparison, more than 60 percent of African countries today are classified as free or partly free.

Since September 11, the political dysfunctions of the Arab world have suddenly presented themselves on the West's doorstep. In the back of everyone's mind—and in the front of many—is the question why. Why is this region the political basket case of the world? Why is it the great holdout, the straggler in the march of modern societies?

Islam's Wide World

Bin Laden has an answer. For him the problem with Arab regimes is that they are insufficiently Islamic. Only by returning to Islam, he tells his followers, will Muslims achieve justice. Democracy, for bin Laden, is a Western invention. Its emphasis on freedom and tolerance produces social decay and licentiousness. Bin Laden and those like him seek the overthrow of the regimes of the Arab world—perhaps of the whole Muslim world—and their replacement by polities founded on strict Islamic principles, ruled by Islamic law (*sharia*) and based on the early Caliphate (the seventh-century Islamic kingdom of Arabia). Their more recent role model was the Taliban regime in Afghanistan.

There are those in the West who agree with bin Laden that Islam is the key to understanding the Middle East's turmoil. Preachers such as Pat Robertson and Jerry Falwell and writers such as Paul Johnson and William Lind have made the case that Islam is a religion of repression and backwardness. More serious scholars have argued—far more insightfully—that the problem is more complex: for fundamentalist Muslims, Islam is considered a template for all life, including politics. But classical Islam, developed in the seventh and eighth cen-

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turies, contains few of the ideas that we associate with democracy today. Elie Kedourie, an eminent student of Arab politics, wrote, "The idea of representation, of elections, of popular suffrage, of political institutions being regulated by laws laid down by a parliamentary assembly, of these laws being guarded and upheld by an independent judiciary, the ideas of the secularity of state . . . all these are profoundly alien to the Muslim political tradition."[1]

Certainly the Koranic model of leadership is authoritarian. The Muslim holy book is bursting with examples of the just king, the pious ruler, the wise arbiter. But the Bible has its authoritarian tendencies as well. The kings of the Old Testament were hardly democrats. The biblical Solomon, held up as the wisest man of all, was, after all, an absolute monarch. The Bible also contains passages that seem to justify slavery and the subjugation of women. The truth is that little is to be gained by searching in the Koran for clues to Islam's true nature. The Koran is a vast book, filled with poetry and contradictions—much like the Bible and the Torah. All three books praise kings, as do most religious texts. As for mixing spiritual and temporal authority, Catholic popes combined religious and political power for centuries in a way that no Muslim ruler has ever been able to achieve. Judaism has had much less involvement with political power because, until Israel's founding, Jews were a minority everywhere in the modern world. Yet, the word "theocracy" was coined by Josephus to describe the political views of ancient Jews.[2] The founding religious texts of all faiths were, for the most part, written in another age, one filled with monarchs, feudalism, war, and insecurity. They bear the stamp of their times.

Still, Western scholars of the nineteenth and early twentieth centuries often argued that Islam encourages authoritarianism. This assertion was probably influenced by their view of the Ottoman Empire, a community of several hundred million Muslims laboring docilely under the sultan in distant Constantinople, singing hosannas to him before Friday prayers. But most of the world at the time was quite similar in its deference to political authority. In Russia, the czar was considered almost a god. In Japan, the emperor was a god. On the whole, Asian empires were more despotic than Western ones, but Islamic rule was no more autocratic than were Chinese, Japanese, or Russian versions.

Indeed, if any intrinsic aspect of Islam is worth noting, it is not its devotion to authority, but the opposite: Islam has an antiauthoritarian streak that is evident in every Muslim land today. It originates, probably, in several *hadith*—sayings of the Prophet Mohammed—in which obedience to the ruler is incumbent on the Muslim only so far as the ruler's commands are in keeping with God's law.[3] If the ruler asks you to violate the faith, all bets are off. ("If he is

[1] Elie Kedourie, *Democracy and Arab Political Culture* (Washington, DC: Washington Institute for Near East Studies, 1992), 5.

[2] Bernard Lewis, *What Went Wrong: Western Impact and Middle Eastern Response* (Oxford: Oxford University Press, 2002), 97.

[3] The *hadith* are often more important than the Koran because they tell Muslims how to implement the sometimes general Koranic injunctions. For example, the Koran commands Muslims to pray, but it does not tell them how to pray; this is found in the *hadith.* (There are, of course, many *hadith*, many of dubious authenticity, and sometimes they contradict each other.)

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ordered to do a sinful act, a Muslim should neither listen to [his leader] nor should he obey his orders."[4]) Religions are vague, of course. This means that they are easy to follow—you can interpret their prescriptions as you like. But it also means that it is easy to slip up—there is always some injunction you are violating. But Islam has no religious establishment—no popes or bishops—that can declare by fiat which is the correct interpretation. As a result, the decision to oppose the state on the grounds that it is insufficiently Islamic can be exercised by anyone who wishes to do so. This much Islam shares with Protestantism. Just as a Protestant with just a little training—Jerry Falwell, Pat Robertson—can declare himself a religious leader, so also can any Muslim opine on issues of faith. In a religion without an official clergy, bin Laden has as much—or as little—authority to issue *fatwas* (religious orders) as does a Pakistani taxi driver in New York City. The problem, in other words, is the absence of religious authority in Islam, not its dominance.

Consider the source of the current chaos in Arab lands. In Egypt, Saudi Arabia, Algeria, and elsewhere, Islamist[5] groups wage bloody campaigns against states that they accuse of betraying Islam. Bin Laden and his deputy, the Egyptian Ayman Zawahiri, both laymen, began their careers by fighting their own governments because of policies they deemed un-Islamic (for Zawahiri, it was Egyptian president Anwar Sadat's 1978 peace treaty with Israel; for bin Laden, it was King Fahd's decision to allow American troops on Saudi soil in 1991). In his 1996 declaration of jihad, bin Laden declared that the Saudi government had left the fold of Islam, and so it was permissible to take up arms against it: "The regime betrayed the *ummah* (community of believers) and joined the *kufr* (unbelievers), assisting and helping them against the Muslims." Bin Laden called for rebellion against rulers, and many responded to his call. The rulers of the Middle East probably wish that Muslims were more submissive toward authority.

There is also the question of timing: if Islam is the problem, then why is this conflict taking place now? Why did Islamic fundamentalism take off only after the 1979 Iranian revolution? Islam and the West have coexisted for fourteen centuries. There have been periods of war but many more periods of peace. Many scholars have pointed out that, until the 1940s, minorities, and particularly Jews, were persecuted less under Muslim rule than under any other majority religion. That is why the Middle East was for centuries home to many minorities. It is commonly noted that a million Jews left or were expelled from Arab countries after the creation of Israel in 1948. No one asks why so many were living in Arab countries in the first place.

The trouble with thundering declarations about "Islam's nature" is that Islam, like any religion, is not what books make it but what people make it. Forget

[4] *Sahih Muslim*, book 20, *hadith* 4533.

[5] "Islamist" refers to people, like bin Laden, who want to use Islam as a political ideology, setting up an Islamic state that follows Islamic law strictly. I use this term interchangeably with the more commonly used "Islamic fundamentalist," although many scholars prefer the former.

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the rantings of the fundamentalists, who are a minority. Most Muslims' daily lives do not confirm the idea of a faith that is intrinsically anti-Western or anti-modern. The most populous Muslim country in the world, Indonesia, has had secular government since its independence in 1949, with a religious opposition that is tiny (although now growing). As for Islam's compatibility with capitalism, Indonesia was until recently the World Bank's model Third World country, having liberalized its economy and grown at 7 percent a year for almost three decades. It has now embraced democracy (still a fragile experiment) and has elected a woman as its president. After Indonesia, the three largest Muslim populations in the world are in Pakistan, Bangladesh, and India (India's Muslims number more than 120 million). Not only have these countries had much experience with democracy, all three have elected women as prime ministers, and they did so well before most Western countries. So although some aspects of Islam are incompatible with women's rights, the reality on the ground is sometimes quite different. And South Asia is not an anomaly with regard to Islamic women. In Afghanistan, before its twenty-year descent into chaos and tyranny, 40 percent of all doctors were women and Kabul was one of the most liberated cities for women in all of Asia. Although bin Laden may have embraced the Taliban's version of Islam, most Afghans did not—as was confirmed by the sight of men in post-Taliban Kabul and Mazar-e-Sharif lining up to watch movies, listen to music, dance, shave, and fly kites.

The real problem lies not in the Muslim world but in the Middle East. When you get to this region, you see in lurid color all the dysfunctions that people conjure up when they think of Islam today. In Iran,[6] Egypt, Syria, Iraq, the West Bank, the Gaza Strip, and the Persian Gulf states, dictatorships pose in various stripes and liberal democracy appears far from reach. The allure of Islamic fundamentalism seems strong, whether spoken of urgently behind closed doors or declared in fiery sermons in mosques. This is the land of flag burners, fiery mullahs, and suicide bombers. America went to war in Afghanistan, but not a single Afghan was linked to any terrorist attack against Americans. Afghanistan was the campground from which an Arab army was battling America.

The Arab world is an important part of the world of Islam—its heartland. But it is only one part and, in numerical terms, a small one. Of the 1.2 billion Muslims in the world, only 260 million live in Arabia. People in the West often use the term "Islamic," "Middle Eastern," and "Arab" interchangeably. But they do not mean the same thing.

The Arab Mind

Today, characterizations of "the Oriental" have about them the whiff of illegitimacy, reminders of the days when ideas such as phrenology passed for science.

[6] I often lump Iran together with Arab countries. It is technically not one of them; Iranians speak Farsi, not Arabic. But Iran's Islamic Revolution of 1979 gave an enormous fillip to the broader fundamentalist movement and, for now, has dulled the age-old divide between the two largest sects of Islam, Sunni (mostly Arabs) and Shia (mostly Iranians).

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(And if "Orientals" are to include the Chinese and the Indians—as they did then—then what to make of the stunning success of these groups at science, math, and other such manifestations of rationality?) But things have moved from one extreme to the other. Those who have resorted to such cultural stereotypes, the "Orientalists," have been succeeded by a new generation of politically correct scholars who will not dare to ask why it is that Arab countries seem to be stuck in a social and political milieu very different from that of the rest of the world. Nor is there any self-criticism in this world. Most Arab writers are more concerned with defending their national honor against the pronouncements of dead Orientalists than with trying to understand the predicament of the Arab world.

The reality is impossible to deny. Of the twenty-two members of the Arab League, not one is an electoral democracy, whereas 63 percent of all the counties in the world are. And although some—Jordan, Morocco—have, in some senses, liberal authoritarian regimes, most do not. The region's recent history is bleak. Its last five decades are littered with examples of Arab crowds hailing one dictator after another as a savior. Gamal Abdel Nasser in Egypt, Mu'ammer Qaddafi in Libya, and Saddam Hussein in Iraq all have been the recipients of the heartfelt adulation of the Arab masses.

The few Arab scholars who venture into the cultural field point out that Arab social structure is deeply authoritarian. The Egyptian-born scholar Bahgat Korany writes that "Arab political discourse [is] littered with descriptions of the enlightened dictator, the heroic leader, the exceptional Za'im, the revered head of family."[7] The Lebanese scholar Halim Barakat suggests that the same patriarchal relations and values that prevail in the Arab family seem also to prevail at work, at school, and in religious, political, and social organizations. In all of these, a father figure rules over others, monopolizing authority, expecting strict obedience, and showing little tolerance of dissent. Projecting a paternal image, those in positions of responsibility (as rulers, leaders, teachers, employers, or supervisors) securely occupy the top of the pyramid of authority. Once in this position, the patriarch cannot be dethroned except by someone who is equally patriarchal.[8]

The Failure of Politics

It is difficult to conjure up the excitement in the world in the late 1950s as Nasser consolidated power in Egypt. For decades Arabs had been ruled by colonial governors and decadent kings. Now they were achieving their dreams of independence, and Nasser was their new savior, a modern man for the postwar era. He had been born under British rule, in Alexandria, a cosmopolitan city that

[7] Bahgat Korany, "Arab Democratization: A Poor Cousin?" *PS: Political Science and Politics* 27, no. 3 (September 1994), 511.

[8] Halim Barakat, *The Arab World: Society, Culture, and State* (Berkeley: University of California Press, 1993), 23.

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was more Mediterranean than Arab. His formative years had been spent in the army, the most Westernized segment of Egyptian society. With his tailored suits and fashionable dark glasses, he cut a daring figure on the world stage. "The Lion of Egypt" spoke for all the Arab world.

Nasser believed that Arab politics needed to be fired by ideas such as self-determination, socialism, and Arab unity. These were modern notions; they were also Western ones. Like many Third World leaders of the time, Nasser was a devoted reader of the British *New Statesman.* His "national charter" of 1962 reads as if it had been written by left-wing intellectuals in Paris or London. Even his most passionately pursued goal, pan-Arabism, was European inspired. It was a version of the nationalism that had united first Italy and then Germany in 1870—the idea that those who spoke one language should be one nation.

Before wealth fattened the Gulf states into golden geese, Egypt was the leader of the Middle East. Thus, Nasser's vision became the region's. Every regime, from the Baathists and generals in Syria and Iraq to the conservative monarchies of the Gulf, spoke in similar terms and tones. They were not simply aping Nasser. The Arab world desperately wanted to become modern, and it saw modernity in an embrace of Western ideas, even if it went hand in hand with a defiance of Western power.

The colonial era of the late nineteenth and early twentieth centuries raised hopes of British friendship that were to be disappointed, but still Arab elites remained fascinated with the West. Future kings and generals attended Victoria College in Alexandria, learning the speech and manners of British gentlemen. Many then went to Oxford, Cambridge, or Sandhurst—a tradition that is still maintained by Jordan's royal family, although now they go to American schools. After World War I, a new liberal age flickered briefly in the Arab world, as ideas about opening politics and society gained currency in places like Egypt, Lebanon, Iraq, and Syria. But the liberal critics of kings and aristocrats were swept away along with those old regimes. A more modern, coarser ideology of military republicanism, state socialism, and Arab nationalism came into vogue. These ideas, however, were still basically Western; the Baathists and Nasserites all wore suits and wanted to modernize their countries.

The new politics and policies of the Arab world went nowhere. For all their energy Arab regimes chose bad ideas and implemented them in worse ways. Socialism produced bureaucracy and stagnation. Rather than adjusting to the failures of central planning, the economies never really moved on. Instead of moving toward democracy, the republics calcified into dictatorships. Third World "non-alignment" became pro-Soviet propaganda. Arab unity cracked and crumbled as countries discovered their own national interests and opportunities. An Arab "Cold War" developed between the countries led by pro-Western kings (the Gulf states, Jordan) and those ruled by revolutionary generals (Syria, Iraq). Worst of all, Israel dealt the Arabs a series of humiliating defeats on the battlefield. Their swift, stunning defeat in 1967 was in some ways the

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turning point, revealing that behind the rhetoric and bombast lay societies that were failing. When Saddam invaded Kuwait in 1990, he destroyed the last remnants of the pan-Arab idea.

By the late 1980s, while the rest of the world was watching old regimes from Moscow to Prague to Seoul to Johannesburg crack, the Arabs were stuck with their corrupt dictators and aging kings. Regimes that might have seemed promising in the 1960s were now exposed as tired kleptocracies, deeply unpopular and thoroughly illegitimate. In an almost unthinkable reversal of a global pattern, almost every Arab country today is less free than it was forty years ago. There are few places in the world about which one can say that.

The Failure of Economics

At almost every meeting or seminar on terrorism organized by think tanks and universities since September 11, 2001, whenever someone wanted to sound thoughtful and serious, he would say in measured tones, "We must fight not just terrorism but also the roots of terrorism." This platitude has been invariably followed by a suggestion for a new Marshall Plan to eradicate poverty in the Muslim world. Who can be opposed to eradicating poverty? But the problem with this diagnosis is that it overlooks an inconvenient fact: the al-Qaeda terrorist network is not made up of the poor and dispossessed.

This is obviously true at the top; bin Laden was born into a family worth more than $5 billion. But it is also true of many of his key associates, such as his deputy, Zawahiri, a former surgeon in Cairo who came from the highest ranks of Egyptian society. His father was a distinguished professor at Cairo University, his grandfather the chief imam of Al Azhar (the most important center of mainstream Islam in the Arab world), and his uncle the first secretary general of the Arab League. Mohammed Atta, the pilot of the first plane to hit the World Trade Center, came from a modern—and moderate—Egyptian family. His father was a lawyer. He had two sisters, a professor and a doctor. Atta himself studied in Hamburg, as had several of the other terrorists. Even the lower-level al-Qaeda recruits appear to have been educated, middle-class men. In this sense, John Walker Lindh, the California kid who dropped out of American life and tuned into the Taliban, was not that different from many of his fellow fundamentalists. In fact, with his high school diploma against their engineering degrees, one could say that he was distinctly undereducated by comparison.

In fact, the breeding grounds of terror have been places that have seen the greatest influx of wealth over the last thirty years. Of the nineteen hijackers, fifteen were from Saudi Arabia, the world's largest petroleum exporter. It is unlikely that poverty was at the heart of their anger. Even Egypt—the other great feeder country for al Qaeda—is not really a poor country by international standards. Its per capita income, $3,690, places it in the middle rank of nations, and it has been growing at a decent 5 percent for the last decade. That may

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not be enough when you take population growth into account—its population growth has been about 3 percent—but many countries around the world are doing far worse. Yet, they have not spawned hordes of men who are willing to drive planes into Manhattan skyscrapers. If poverty were the source of terror, the recruits should have come from sub-Saharan Africa or South Asia, not the Middle East.

There is, however, a powerful economic dimension to the crisis in the Arab world. The problem is wealth, not poverty. Regimes that get rich through natural resources tend never to develop, modernize, or gain legitimacy. The Arab world is the poster child for this theory of trust-fund states. And this is true not only for the big oil producers. Consider Egypt, which is a small but significant exporter of oil and gas. It also earns $2 billion a year in transit fees paid by ships crossing the Suez Canal, and gets another $2.2 billion a year in aid from the United States. In addition, it gets large sums in remittances—money sent home—from Egyptians who work in the Gulf states. All told, it gets a hefty percentage of its GDP from unearned income. Or consider Jordan, a progressive state that is liberalizing; it gets $1 billion a year in aid from the United States. Although that may seem to be a small figure, keep in mind that Jordan's GDP is only $17 billion. Almost 6 percent of its annual income is foreign aid from one country.

Easy money means little economic or political modernization. The unearned income relieves the government of the need to tax its people—and in return provide something to them in the form of accountability, transparency, even representation.[9] History shows that a government's need to tax its people forces it to become more responsive and representative of its people. Middle Eastern regimes ask little of their people and, in return, give little to them. Another bad effect of natural-resource-derived wealth is that it makes the government rich enough to become repressive. There is always money enough for the police and the army. Saudi Arabia, for example, spends 13 percent of its GDP

[9] John Waterbury has demonstrated that, far from being undertaxed, the Middle East is the "most heavily taxed of the developing regions." Using World Bank data from 1975 to 1985, Waterbury showed that "tax revenues as a proportion of GNP averaged 25 percent for Middle Eastern states while Latin America averaged 12 percent. This reflects not merely the effect of the preponderant weight of captive petroleum corporations in several Middle Eastern countries, which can be easily and heavily taxed. On average, 19 percent of overall tax revenues in the Middle East came from corporate profits tax, while the corresponding figure for Africa was 20 percent, for Asia 19 percent, and for Latin America 10 percent." But Waterbury errs by neglecting to disaggregate Arab states by type and amount of unearned income. If he had done so, he would have found that the oil-producing states—such as Saudi Arabia and Kuwait—levy few or no taxes, whereas the larger non–oil-producing states such as Egypt and Syria do levy substantial direct and indirect taxes. Although the unearned income that non–oil-producing states receive is significant, it is not enough to live on. Most of the unearned income in such states goes straight to the military. So the absence of demands for democracy in the Middle East can be chalked up to two separate factors: mass bribery in the really rich states and mass repression in the poorer ones. But both are courtesy of income that flows into the governments' coffers and requires very little real economic activity.

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on the military, as does Oman. Kuwait spends around 8 percent. Various estimates of Iraqi military spending before the Gulf War have put its military spending at somewhere between 25 and 40 percent of annual GDP, an unusually high rate no doubt sustained, in part, by the Iran-Iraq War, but also by the massive internal intelligence network maintained by Saddam Hussein and his Baath Party.

For years, many in the oil-rich states argued that their enormous wealth would bring modernization. They pointed to the impressive appetites of Saudis and Kuwaitis for things Western, from McDonald's hamburgers to Rolex watches to Cadillac limousines. But importing Western goods is easy; importing the inner stuffing of modern society—a free market, political parties, accountability, the rule of law—is difficult and even dangerous for the ruling elites. The Gulf states, for example, have gotten a bastardized version of modernization, with the goods and even the workers imported from abroad. Little of their modernness is homegrown; if the oil evaporated tomorrow, these states would have little to show for decades of wealth except, perhaps, an overdeveloped capacity for leisure.

Fear of Westernization

There is a sense of pride and fall at the heart of the Arab problem. It makes economic advance impossible and political progress fraught with difficulty. America thinks of modernity as all good—and it has been almost all good for America. But for the Arab world, modernity has been one failure after another. Each path followed—socialism, secularism, nationalism—has turned into a dead end. People often wonder why the Arab countries will not try secularism. In fact, for most of the last century, most of them did. Now Arabs associate the failure of their governments with the failure of secularism and of the Western path. The Arab world is disillusioned with the West when it should be disillusioned with its own leaders.

The new, accelerated globalization that flourished in the 1990s has hit the Arab world in a strange way. Its societies are open enough to be disrupted by modernity, but not so open that they can ride the wave. Arabs see the television shows, eat the fast foods, and drink the sodas, but they do not see genuine liberalization in their societies, with ordinary opportunities and dynamism—just the same elites controlling things. Globalization in the Arab world is the critic's caricature of globalization, a slew of Western products and billboards with little else. For the elites in Arab societies, it means more things to buy. But for some of them, it is also an unsettling phenomenon that threatens their comfortable base of power.

This mixture of fascination and repulsion with the West—with modernity—has utterly disoriented the Arab world. Young men, often better educated than their parents, leave their traditional villages to find work. They arrive in the noisy, crowded cities of Cairo, Beirut, or Damascus, or go to work in the oil

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states. (Almost 10 percent of Egypt's working population has worked in the Gulf states at some point.) In their new world, they see great disparities in wealth and the disorienting effects of modernity; most unsettlingly, they see women, unveiled and in public places, taking buses, eating in cafes, and working alongside them. They come face to face with the contradictions of modern life, seeking the wealth of the new world but the tradition and certainty of the old.

The Rise of Religion

Nasser was a reasonably devout Muslim, but he had no interest in mixing religion with politics, which struck him as moving backward. This became painfully apparent to the small Islamic parties that supported Nasser's rise to power. The most important one, the Muslim Brotherhood, began opposing him vigorously, often violently, by the early 1950s. Nasser cracked down on it ferociously, imprisoning more than a thousand of its leaders and executing six of them in 1954. One of those jailed was Sayyid Qutb, a frail man with a fiery pen, who wrote a book in prison called *Signposts on the Road*, which in some ways marked the beginning of modern political Islam or what is often called Islamic fundamentalism.[10]

In his book, Qutb condemned Nasser as an impious Muslim and his regime as un-Islamic. Indeed, he went on, almost every modern Arab regime was similarly flawed. Qutb envisioned a better, more virtuous polity based on strict Islamic principles, a core goal of orthodox Muslims since the 1880s.[11] As the regimes of the Middle East grew more distant, oppressive, and hollow in the decades following Nasser, fundamentalism's appeal grew. It flourished because the Muslim Brotherhood and organizations like it at least tried to give people a sense of meaning and purpose in a changing world, something no leader in the Middle East tried to do. In his seminal work, *The Arab Predicament*, which best explains the fracture of Arab political culture, Fouad Ajami explains, "The fundamentalist call has resonance because it invited men to participate . . . [in] contrast to a political culture that reduces citizens to spectators and asks them to leave things to their rulers. At a time when the future is uncertain, it connects them to a tradition that reduces bewilderment." Fundamentalism gave Arabs who were dissatisfied with their lot a powerful language of opposition.

On that score, Islam had little competition. The Arab world is a political desert with no real political parties, no free press, and few pathways for dissent.

[10] In many ways, the original fundamentalist was Qutb's contemporary, the Pakistani scholar Abul Ala Maududi. Qutb was an admirer of Maududi and translated his writings into Arabic. But it is Qutb who is read throughout the Islamic world today.

[11] Maududi argued that the colonial powers could be viewed in the same manner as the pagan tribes at the dawn of Islam. Just as the pagans were fought and resisted by the Prophet, so too should a jihad be waged by Muslims against their colonial oppressors. Qutb adopted Maududi's reasoning and extended it to propose jihad against irreligious Muslim governments. Sayyid Qutb, *Milestones* (Indianapolis: American Trust Publications, 1990). The best introduction to Qutb is Gilles Kepel, *Muslim Extremism in Egypt: The Prophet and Pharaoh* (Berkeley: University of California Press, 1985).

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As a result, the mosque became the place to discuss politics. As the only place that cannot be banned in Muslim societies, it is where all the hate and opposition toward the regimes collected and grew. The language of opposition became, in these lands, the language of religion. This combination of religion and politics has proven to be combustible. Religion, at least the religion of the Abrahamic traditions (Judaism, Christianity, and Islam), stresses moral absolutes. But politics is all about compromise. The result has been a ruthless, winner-take-all attitude toward political life.

Islamic fundamentalism got a tremendous boost in 1979 when Ayatollah Ruhollah Khomeini toppled the staunchly pro-American shah of Iran. The Iranian Revolution demonstrated that a powerful ruler could be taken on by groups within the society. It also revealed how, in a developing society, even seemingly benign forces of progress—for example, education—can add to the turmoil. Until the 1970s most Muslims in the Middle East were illiterate and lived in villages and towns. They practiced a kind of village Islam that had adapted itself to local cultures and to normal human desires. Pluralistic and tolerant, these villages often worshipped saints, went to shrines, sang religious hymns, and cherished art—all technically disallowed in Islam. By the 1970s, however, these societies were being urbanized. People had begun moving out of the villages to search for jobs in towns and cities. Their religious experience was no longer rooted in a specific place with local customs and traditions. At the same time, they were learning to read, and they discovered that a new Islam was being preached by a new generation of writers, preachers, and teachers. This was an abstract faith not rooted in historical experience but literal and puritanical—the Islam of the high church as opposed to the Islam of the street fair.

In Iran, Ayatollah Khomeini used a powerful technology—the audiocassette. Even when he was exiled in Paris in the 1970s, his sermons were distributed throughout Iran and became the vehicle of opposition to the shah's repressive regime. But they also taught people a new, angry, austere Islam in which the West is evil, America is the "Great Satan," and the unbeliever is to be fought. Khomeini was not alone in using the language of Islam as a political tool. Intellectuals, disillusioned by the half-baked or overly rapid modernization that was throwing their world into turmoil, were writing books against "Westoxification" and calling the modern Iranian man—half Western, half Eastern—"rootless." Fashionable intellectuals, often writing from the comfort of London or Paris, would criticize American secularism and consumerism and endorse an Islamic alternative. As theories like these spread across the Arab world, they appealed not to the poorest of the poor, for whom Westernization was magical, since it meant food and medicine; rather, they appealed to the educated hordes entering the cities of the Middle East or seeking education and jobs in the West. They were disoriented and ready to be taught that their disorientation would be solved by recourse to a new, true Islam.

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In the Sunni world, the rise of Islamic fundamentalism was shaped and quickened by the fact that Islam is a highly egalitarian religion. This for most of its history has proved an empowering call for people who felt powerless. But it also means that no Muslim really has the authority to question whether someone is a "proper Muslim." In the Middle Ages, there was an informal understanding that a trained scholarly-clerical community, the *ulama*, had the authority to pronounce on such matters.[12] But fundamentalist thinkers, from Pakistani Maulana Maududi and Qutb to their followers, have muscled in on that territory. They loudly and continuously pronounce judgment as to whether people are "good Muslims." In effect, they excommunicate those whose Islam does not match their own. This process has terrified the Muslim world. Leaders dare not take on the rising tide of Islamists. Intellectual and social elites, widely discredited by their slavish support of the official government line, are also scared to speak out against a genuinely free-thinking clergy. As a result, moderate Muslims are loath to criticize or debunk the fanaticism of the fundamentalists. Some worry, like the moderates in Northern Ireland, about their safety if they speak their mind. Even as venerated a figure as Naguib Mahfouz was stabbed in Egypt for his mildly critical comments about the Islamists.

Nowhere is this more true than in the moderate monarchies of the Persian Gulf, particularly Saudi Arabia. The Saudi regime has played a dangerous game: it has tried to deflect attention away from its spotty economic and political record by allowing free reign to its most extreme clerics, hoping to gain legitimacy by association. Saudi Arabia's educational system is run by medieval-minded religious bureaucrats. Over the past three decades, the Saudis—mostly through private trusts—have funded religious schools (*madrasas*) and centers that spread Wahhabism (a rigid, desert variant of Islam that is the template for most Islamic fundamentalists) around the world. In the past thirty years, Saudi-funded *madrasas* have churned out tens of thousands of half-educated, fanatical Muslims who view the modern world and non-Muslims with great suspicion. America in this world-view is almost always uniquely evil.

This exported fundamentalism has infected not just other Arab societies but countries outside the Arab world. It often carries with it a distinctly parochial Arab political program. Thus, Indonesian Muslims, who twenty years ago did not know where Palestine was, are today militant in their support of its cause. The Arab influence extends even into the realm of architecture. In its buildings, the Islamic world has always mixed Arab influences with local ones—Hindu, Javan, Russian. But local cultures are now being ignored in places such as Indonesia and Malaysia because they are seen as insufficiently Islamic (meaning Arab).

Pakistan has had a particularly bad experience with exported fundamentalism. During the eleven-year reign of General Zia ul-Haq (1977–1988), the dic-

[12] On the power of the medieval *ulama*, see Richard W. Bulliet, *Islam: The View from the Edge* (New York: Columbia University Press, 1994).

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tator decided that he needed allies, since he had squashed political dissent and opposition parties. He found them in the local fundamentalists, who became his political allies. With the aid of Saudi financiers and functionaries, he set up scores of *madrasas* throughout the country. The Afghan war attracted religious zealots, eager to fight godless communism. These "jihadis" came mostly from Arabia. Without Saudi money and men, the Taliban would not have existed, nor would Pakistan have become the hotbed of fundamentalism that it is today. Zia's embrace of Islam brought him a kind of legitimacy, but it has eroded the social fabric of Pakistan. The country is now full of armed radicals, who first supported the Taliban, then joined in the struggle in Kashmir, and are now trying to undermine the secular regime of General Pervez Musharraf. They have infected the legal and political system with medieval ideas of blasphemy, the subordinate role of women, and the evils of modern banking.

Pakistan is not alone. A similar process has been at work in countries as diverse as Yemen, Indonesia, and the Philippines. During the 1980s and 1990s, a kind of competition emerged between Iran and Saudi Arabia, the two most religious states in the Middle East, to see who would be the greater religious power in the Islamic World. As a result, what were once small, extreme strains of Islam, limited to parts of the Middle East, have taken root around the world—in the globalization of radical Islam.

The Road to Democracy

For the most part, the task of reform in the Middle East must fall to the peoples of the region. No one can make democracy, liberalism, or secularism take root in these societies without their own search, efforts, and achievements. But the Western world in general, and the United States in particular, can help enormously. The United States is the dominant power in the Middle East; every country views its relations with Washington as the most critical tie they have. Oil, strategic ties, and the unique U.S. relationship with Israel ensure American involvement. Washington will continue to aid the Egyptian regime, protect the Saudi monarchy, and broker negotiations between Israel and the Palestinians. The question really is, should it not ask for something in return? By not pushing these regimes, the United States would be making a conscious decision to let things stay as they are—to opt for stability. This is a worthwhile goal, except that the current situation in the Middle East is highly unstable. Even if viewed from a strategic perspective, it is in America's immediate security interests to try to make the regimes of the Middle East less prone to breeding fanatical and terrorist opposition movements.

As a start, the West must recognize that it does not seek democracy in the Middle East—at least not yet. We seek first constitutional liberalism, which is very different. Clarifying our immediate goals will actually make them more easily attainable. The regimes in the Middle East will be delighted to learn that we will not try to force them to hold elections tomorrow. They will be less

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pleased to know that we will continually press them on a whole array of other issues. The Saudi monarchy must do more to end its governmental and nongovernmental support for extreme Islam, which is now the kingdom's second largest export to the rest of the world. If this offends advocates of pure free speech, so be it. It must rein in its religious and educational leaders and force them to stop flirting with fanaticism. In Egypt, we must ask President Mubarak to insist that the state-owned press drop its anti-American and anti-Semitic rants and begin opening itself up to other voices in the country. Some of these voices will be worse than those we hear now, but some will be better. Most important, people in these countries will begin to speak about what truly concerns them—not only the status of Jerusalem or American policies in the Gulf, but also the regimes they live under and the politics they confront.

Israel has become the great excuse for much of the Arab world, the way for regimes to deflect attention from their own failures. Other countries have foreign policy disagreements with one another—think of China and Japan—but they do not have the sometimes poisonous quality of the Israeli-Arab divide. Israel's occupation of the West Bank and Gaza Strip has turned into the great cause of the Arab world. But even if fomented by cynical Arab rulers, this cause is now a reality that cannot be ignored. There is a new Arab street in the Middle East, built on Al-Jazeera and Internet chat sites. And the talk is all about the plight of the Palestinians. If unaddressed, this issue will only grow in importance, infecting America's relations with the entire Muslim world and ensuring permanent insecurity for Israel. The United States should maintain its unyielding support for the security of Israel. But it should also do what is in the best interest of itself, Israel, and the Palestinians, which is to press hard to broker a settlement that provides Israel and the Palestinians a viable state. Peace between the Israelis and Palestinians will not solve the problem of Arab dysfunction, but it would ease some of the tensions between the Arab world and the West.

The more lasting solution is economic and political reform. Economic reforms must come first, for they are fundamental. Even though the problems facing the Middle East are not purely economic, their solution may lie in economics. Moving toward capitalism, as we have seen, is the surest path to creating a limited, accountable state and a genuine middle class. And just as in Spain, Portugal, Chile, Taiwan, South Korea, and Mexico, economic reform means the beginnings of a genuine rule of law (capitalism needs contracts), openness to the world, access to information, and, perhaps most important, the development of a business class. If you talk with Arab businessmen and women, they want the old system to change. They have a stake in openness, in rules, and in stability. They want their societies to modernize and move forward rather than stay trapped in factionalism and war. Instead of the romance of ideology, they seek the reality of material progress. In the Middle East today, there are too many people consumed by political dreams and too few interested in practical plans.

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There is a dominant business class in the Middle East, but it owes its position to oil or to connections to the ruling families.[13] Its wealth is that of feudalism, not capitalism, and its political effects remain feudal as well. A genuinely entrepreneurial business class would be the single most important force for change in the Middle East, pulling along all others in its wake. If culture matters, this is one place it would help. Arab culture for thousands of years has been full of traders, merchants, and businessmen. The bazaar is probably the oldest institution in the Middle East. And Islam has been historically highly receptive to business—Mohammed himself was a businessman. Ultimately, the battle for reform is one that Middle Easterners will have to fight, which is why there needs to be some group within these societies that advocates and benefits from economic and political reform.

This is not as fantastic an idea as it might sound. Already stirrings of genuine economic activity can be seen in parts of the Middle East. Jordan has become a member of the World Trade Organization (WTO), signed a free-trade pact with the United States, privatized key industries, and even encouraged cross-border business ventures with Israel. Saudi Arabia is seeking WTO membership. Egypt has made some small progress on the road to reform. Among the oil-rich countries, Bahrain and the United Arab Emirates are trying to wean themselves of their dependence on oil. Dubai, part of the United Arab Emirates, has already gotten oil down to merely 8 percent of its GDP and has publicly announced its intention of becoming a trading and banking center—the "Singapore of the Middle East." (It would do well to emulate Singapore's tolerance of its ethnic and religious minorities.) Even Saudi Arabia recognizes that its oil economy can provide only one job for every three of its young men coming into the work force. In Algeria, President Abdelaziz Bouteflika desperately wants foreign investment to repair his tattered economy.

If we could choose one place to press hardest to reform, it should be Egypt. Although Jordan has a more progressive ruler, and Saudi Arabia is more critical because of its oil, Egypt is the intellectual soul of the Arab world. If Egypt were to progress economically and politically, it would demonstrate more powerfully than any essay or speech that Islam is compatible with modernity, and that Arabs can thrive in today's world. In East Asia, Japan's economic success proved a powerful example that others in the region looked to and followed. The Middle East needs one such homegrown success story.

There is another possible candidate for the role: Iraq. Before it became a playpen for Saddam's megalomania, Iraq was one of the most advanced, literate, and secular countries in the region. It has oil, but more importantly, it has water. Iraq is the land of one of the oldest river-valley civilizations in the world. Its capital, Baghdad, is home to one of the wonders of the ancient world, the Hanging Gardens of Babylon, and has been an important city for thousands of

[13] There are some exceptions to this rule in Gulf states such as Dubai, Bahrain, and even Saudi Arabia.

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years. Iraq in the 1950s was a country with a highly developed civil society, with engineers, doctors, and architects, many of whom were women. Now that Saddam has been dislodged, the United States must engage in a serious long-term project of nation building, because Iraq could well become the first major Arab country to combine Arab culture with economic dynamism, religious tolerance, liberal politics, and a modern outlook on the world. And success is infectious.

The Importance of Constitutionalism

Spreading democracy is tough. But that does not mean that the West—in particular the United States—should stop trying to assist the forces of liberal democracy. Nor does it imply accepting blindly authoritarian regimes as the least bad alternative. It does, however, suggest the need for a certain sophistication. The haste to press countries into elections over the last decade has been, in many cases, counterproductive. In countries such as Bosnia, which went to the polls within a year of the Dayton peace accords, elections only made more powerful precisely the kinds of ugly ethnic forces that have made it more difficult to build genuine liberal democracy there. The ethnic thugs stayed in power and kept the courts packed and the police well fed. The old system has stayed in place, delaying real change for years, perhaps decades. In East Timor and Afghanistan, a longer period of state-building has proved useful. In general, a five-year period of transition, political reform, and institutional development should precede national multiparty elections. In a country with strong regional, ethnic, or religious divisions—like Iraq—this is crucial. It ensures that elections are held after civic institutions, courts, political parties, and the economy have all begun to function. As with everything in life, timing matters.

Although it is easy to impose elections on a country, it is more difficult to push constitutional liberalism on a society. The process of genuine liberalization and democratization, in which an election is only one step, is gradual and long term. Recognizing this, governments and nongovernmental organizations are increasingly promoting an array of measures designed to bolster constitutional liberalism in developing countries. The National Endowment for Democracy promotes free markets, independent labor movements, and political parties. The U.S. Agency for International Development funds independent judiciaries. In the end, however, elections trump everything. If a country holds elections, Washington and the world will tolerate a great deal from the resulting government, as they did with Russia's Boris Yeltsin, Kyrgystan's Askar Akayev, and Argentina's Carlos Menem. In an age of images and symbols, elections are easy to capture on film. But how to do you televise the rule of law? Yet, there is life after elections, especially for the people who live there.

Conversely, the absence of free and fair elections should be viewed as one flaw, not the definition of tyranny. Elections are an important virtue of governance, but they are not the only virtue. It is more important that governments be judged by yardsticks related to constitutional liberalism. Economic, civil,

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and religious liberties are at the core of human autonomy and dignity. If a government with limited democracy steadily expands these freedoms, it should not be branded a dictatorship. Despite the limited political choice they offer, countries such as Singapore, Malaysia, Jordan, and Morocco provide a better environment for the life, liberty, and happiness of citizens than do the dictatorships in Iraq and Libya or the illiberal democracies of Venezuela, Russia, or Ghana. And the pressures of global capitalism can push the process of liberalization forward, as they have in China. Markets and morals can work together.

The most difficult task economically is reforming the trust-fund states. It has proved nearly impossible to wean them of their easy money. In 2002, the World Bank began experimenting with a potentially pathbreaking model in the central African country of Chad. Chad has major oil fields, but foreign companies were wary of major investments to extract and transport the oil because of the country's history of political instability. The World Bank agreed to step in, bless the project, and loan the government money to partner with a multinational consortium—led by ExxonMobil—to get the oil flowing. But it also put in place certain conditions. Chad's parliament had to pass a law guaranteeing that 80 percent of the oil revenues would be spent on health, education, and rural infrastructure, 5 percent would be spent on locals near the oil fields, and 10 percent would be put into an escrow account for future generations. That leaves the government 5 percent to spend as it wishes. To ensure that the system works in practice as well as in theory, the bank required that all oil revenues be deposited in an offshore account that is managed by an independent oversight committee (made up of some of Chad's leading citizens). It is too soon to tell if this model works, but if it does, it could be copied elsewhere. Even in countries that do not need the World Bank's help, it could have a demonstration effect. The Chad model provides a method by which natural-resource revenues can become a blessing for countries rather than the curse they currently are.

Finally, we need to revive constitutionalism. One effect of the overemphasis of pure democracy is that little effort is given to creating imaginative constitutions for transitional countries. Constitutionalism, as it was understood by its greatest eighteenth-century exponents, such as Montesquieu and Madison, is a complicated system of checks and balances designed to prevent the accumulation of power and the abuse of office. This is accomplished not by simply writing up a list of rights but by constructing a system in which government will not violate those rights. Various groups must be included and empowered because, as Madison explained, "ambition must be made to counteract ambition."

Constitutions were also meant to tame the passions of the public, creating not simply democratic but also deliberative government. The South African constitution is an example of an unusually crafted, somewhat undemocratic structure. It secures power for minorities, both those regionally based, such as the Zulus, and those that are dispersed, such as the whites. In doing so it has increased that country's chances of success as a democracy, despite its poverty and harrowing social catastrophes.

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Unfortunately, the rich variety of unelected bodies, indirect voting, federal arrangements, and checks and balances that characterized so many of the formal and informal constitutions of Europe are now regarded with suspicion. What could be called the Weimar syndrome—named after Germany's beautifully constructed constitution, which nevertheless failed to avert fascism—has made people regard constitutions as simply paperwork that cannot make much difference (as if any political system in Germany would have easily weathered military defeat, social revolution, the Great Depression, and hyperinflation). Procedures that inhibit direct democracy are seen as inauthentic, muzzling the voice of the people. Today, around the world, we see variations on the same majoritarian theme. But the trouble with these winner-take-all systems is that, in most democratizing countries, the winner really does take all.

Of course, cultures vary, and different societies will require different frameworks of government. This is a plea not for the wholesale adoption of any one model of government but rather for a more variegated conception of liberal democracy, one that emphasizes both words in that phrase. Genuine democracy is a fragile system that balances not just these two but other forces—what Tocqueville called "intermediate associations"—to create, in the end, a majestic clockwork. Understanding this system requires an intellectual task of recovering the constitutional liberal tradition, central to Western experience and to the development of good government throughout the world.

This recovery will be incomplete if we limit it in our minds to what is happening in faraway countries that are troubled and poor and utterly different from the prosperous, democratic West. Democracy is a work in progress, abroad as well as at home. The tension between democracy and liberalism is one that flourished in the West's own past. In a very different form, it still exists and is growing in the Western world. It is most widely prevalent in one country in particular: the United States of America.

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Presidential Selection: Electoral Fallacies*

JACK N. RAKOVE

The remaining mode was an election by the people or rather by the qualified part of them at large. With all its imperfections he liked this best.
—James Madison, July 25, 1787[1]

Serious discussion of the so-called "electoral college"[2] was one minor casualty of the thirty-six days of legal and political maneuvering accompanying the Florida recount that ultimately decided the presidential election of 2000. For perhaps a week after 7 November, the realization that the runner-up in the national popular vote could well inherit the White House sparked a modicum of interest in the workings of the electoral college. Events in Florida soon took over, however, not to be dislodged. Even then, one might have thought

* On 27 September 2002, there took place in the Iphigene Sulzberger Tower Suite at Barnard College a symposium on various aspects of the question: "Should Americans Have the Constitutional Right to Vote for Presidential Electors?" The symposium was sponsored by the Academy of Political Science and the Barnard College Department of Political Science and was funded by the Carnegie Corporation of New York. The question addressed was provoked by the part of the Supreme Court decision in *Bush v. Gore* which asserted that there is no constitutional right to vote for president, so voting directly for presidential electors can be given and taken away by state legislators even after a popular vote. In our Summer 2003 issue, we published one of the papers and a transcript of the ensuing panel discussion. In this issue, we publish two more of the papers prepared for that symposium.

[1] Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven, CT: Yale University Press, 1966), II, 111.

[2] The term is not found in the Constitution, nor does it accurately describe the activities of a body that never meets together and never deliberates. The term might be more appropriate had the Framers provided for a national electoral assembly to meet as a single body and deliberate and vote until a decision was reached, but that idea barely surfaced at the Federal Convention and was never seriously discussed.

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that the rationale for the winner-take-all rule of appointing electors that has prevailed in nearly every state since the early nineteenth century might attract critical scrutiny. After all, why should all of Florida's electors go to the candidate who mustered a statistically insignificant plurality of a few hundred or thousand votes in a statewide electorate of six million? If the election demonstrated anything, it was that Florida voters were divided into two equal halves, one of whom, if asked or pressed, would have preferred seeing twelve of the state's twenty-five electoral votes go to the losing candidate, the hapless warrior Al Gore, rather than maximize the state's impact on the national electoral arithmetic. But both the logic and the irony of the winner-take-all rule eluded the attention of the national media and citizenry.

The collective preoccupation first with Florida and then with the Supreme Court's surprising intervention has obscured the most important political fact of the election. George W. Bush's ability to hold on to victory in Florida can be attributed to many factors, among which were: the legal obstacles foreclosing a challenge to the Palm Beach County butterfly ballot, which cost Gore enough votes to dwarf the shift of any recount; Gore's unwillingness to challenge illegal military votes; and a legal strategy that failed to seek a statewide recount. But Bush's *national* victory was peculiarly a tribute to the electoral calculus that gives different leveraging power to voters in different states through the "senatorial bump" that allots two additional electors to each state. In a close election, carrying more states with fewer people may produce a decisive electoral advantage, and so it did in 2000. Bush carried thirty states with 271 electoral votes, or nine votes per electoral unit, and Gore carried twenty states and the District of Columbia, with 267 votes, or roughly thirteen votes per unit; Bush carried thirteen of the twenty least populous states to Gore's seven. Carrying more of the smaller states was the one political advantage that mattered most in the electoral arithmetic.

Defenders of the electoral college profess to see numerous cautionary advantages to this state-based system of electing a president. It is said to support a healthier form of aggregating the preferences of the people than would a simple election in a single national constituency, replacing a crude, perhaps too democratic form of majority rule with a healthier constitutional form that values the capacity to carry numerous provincial constituencies. It is also said to favor a more nationalizing style of campaigning, requiring candidates to assemble multistate and multiregional coalitions rather than focusing their political efforts on the largest, most concentrated (hence urban) communities and therefore to be more sensitive to the array of concerns that are diversely distributed across the country.[3] It is said, too, to be an essential feature of the grand design

[3] For a succinct statement of these themes, see the early op-ed written by Harvard Law School professor and former Solicitor General Charles Fried, "Electoral College, Safeguard of Federalism," *New York Times*, 11 November 2000. For other representative statements, see the essays collected in Gary L. Gregg II, ed., *Securing Democracy: Why We Have an Electoral College* (Wilmington, DE: ISI Books, 2001); Robert M. Hardaway, *The Electoral College and the Constitution: The Case for Preserving Federalism* (Westport, CT: Praeger, 1994).

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for a truly federal republic that remains one of the great legacies of the founding era. As Professor Judith Best repeatedly suggests in her accompanying essay, an attack on the federal aspects of the electoral college would ultimately threaten federalism itself.[4]

These are serious criticisms, but they also rest on fallacious premises, a problematic reading of history, and an evasion of another great revelation of the Y2K election: that the logic of the electoral system and the sophistication of modern polling methods enable campaigns to concentrate resources and attention only on the relatively small number of electoral units that are in serious contention and are therefore designated "battleground states." Far from diffusing political activity across the extended republic, electoral logic allows it to be narrowly targeted to key communities and particular interests within them. Perhaps more important still, the defense of the sliding calculus of the value of votes in states of different sizes rests on assumptions that James Madison tried, but failed, to disprove at the Federal Convention of 1787: that the interests of citizens are somehow defined in some essential way by the size of the states in which they live or by the corporate identity of the states. But attachment to the principle of statehood or to the size of states is irrelevant to the formation of the preferences according to which citizens actually cast their votes. If that is so, then a system that allows the existence of states of different sizes to justify an inequitable rule for weighting votes on the basis of the accident of residence should not be deemed superior, in principle, to one that would rest on the modern democratic principle—usually labeled one person, one vote—that gives every vote the same value.

Were I the Madisonian lawgiver, then, I would replace the Framers's hastily sketched system, which was obsolete within a bare decade of its inauguration, with a single national electorate and a requirement that a victorious candidate receive at least 45 percent of the vote on the first round, or failing that, capture a majority in a run-off between the two highest finalists to take place within two weeks of the initial election. To ward off the danger that close elections would produce nasty recounts subject to all manner of legal and political hanky-panky in the grand Florida mode, I would further recommend either a vigorous use of the power of Congress to regulate its own elections or authority derived from an appropriate provision in the requisite constitutional amendment to set the standards for balloting at the highest level possible.

For better or worse, however, I am not a Madisonian lawgiver, but merely a working historian whose primary subject is the origin of American constitutionalism in the late eighteenth century, with a special interest in the relation between questions of the "original meaning" of the Constitution and the conduct of contemporary politics and governance. Accordingly, rather than defend this scheme on its merits, as a real political scientist might, I shall devote the

[4] Judith A. Best, "Presidential Selection: Complex Problems and Simple Solutions," *Political Science Quarterly* 119 (Spring 2004): 39–59.

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rest of this essay to explaining how the electoral system was first devised and why it evolved as quickly as it did; in doing so, I shall also challenge the federalism rationale that underlies Judith Best's defense of the existing procedures. But first, it would be useful to discuss some subconstitutional remedies for the perceived inequities of the electoral system.

No one who earns his daily bread studying history can be a stranger to the doctrine of unintended consequences. So, too, any historian rash enough to support as fundamental a change as the replacement of the electoral college with a national popular vote could fairly be asked to check his professional credentials at the door, subject his intellectual baggage to heightened scrutiny, and undergo interrogation as to whether he is simply cloaking his own political preferences in the best available historical garb. A system that misfires only once a century, even with some occasional near misses,[5] cannot be that bad, especially if we can plausibly conclude that without the integrative impetus it has long given to American politics, our notoriously lax party system might grow flabbier still. Better the equilibrium we know than the uncertainties we would face should so significant a reform be implemented.

A second form of historical common sense further confirms that even to talk about reforming the electoral college is "a waste of time," as former president Jimmy Carter reminded me, after summoning me on a fool's errand to make much the same argument I will develop here.[6] Every politically astute American knows the constitutional arithmetic. If one assumes that a reform of the presidential election system should take the form of an Article V amendment, then only a certified naif could imagine that the least populous states would permit a change whose first objective would be to eliminate the unfair leverage their voters derive through the senatorial bump. The two-thirds congressional majorities required to propose amendments assure that the Senate would establish a near impermeable line of defense. And should that senatorial line somehow be breached, one can hardly imagine that the thirteen least populous states would fail to exercise the constitutional negative provided by the ratification provision of Article V. Under the most recent allocation of electors following the federal census of 2000, twelve states will cast either three or four electoral votes in 2004 and 2008.

Of course, there are alternative methods of tacitly amending the electoral system without complying with Article V. As the last election reminded us, the

[5] It is worth noting that in 1976, a relatively small swing of votes in Ohio and Hawaii would have given electoral victory to Gerald Ford, notwithstanding Jimmy Carter's national plurality of well over a million votes. And in 1960, a plausible case can be made that Richard Nixon could be credited with a popular vote plurality over John Kennedy because accounts of the voting in Alabama customarily lump voters preferring an unpledged slate of Democratic electors with those pledged to support Kennedy in aggregating the preferences of the good citizens of that state. See Brian J. Gaines, "Popular Myths about Popular Vote–Electoral College Splits," *P.S.: Political Science and Politics* 34 (2001): 71–75.

[6] See the transcript of the hearings of the National Commission on Federal Election Reform, 26 March 2001, accessed at http://www.reformelections.org/data/transcripts.

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power of determining how electors are to be selected belongs not to the people but to the state legislatures.[7] Of their own volition, the state legislatures, or even a partial combination thereof, could adopt either of two oft-mentioned alternatives. They could move to implement the Maine-Nebraska system of appointing two electors statewide, with the remaining electors selected by voters in each congressional district. Or a coalition of states (presumably but not necessarily the most populous) that could cumulatively produce the requisite majority of 270 votes could enact legislation pledging to cast all of the electoral votes of their individual states for the candidate receiving a plurality of the national popular vote, regardless of the preferences of their own voters.[8]

Each of these alternatives is vulnerable to significant objections. Given what we know of the zeal and science that go into the decennial follies in congressional redistricting, would it really be wise to tie presidential elections to the same techniques of manipulation?[9] It would make far more sense to divide electors among candidates on the basis of the statewide popular vote, rounding fractions up in favor of the candidate enjoying a statewide plurality.

The idea of an interstate bargain among a subset of states collectively casting a winning majority of electoral votes is vulnerable to similar reservations. It assumes, first, that legislators, for reasons of principle, would somehow transcend their own partisan preferences, and those of their constituents, to adopt a self-sacrificing rule that would commit one state's electors to the preferences of the voters of other states. Whatever weak fellow-feeling connects citizens and legislators of the most populous states—in my view, none—it boggles the mind to think that a principled recognition of the merits of acceding to the preferences of Californians (should a plurality of that state's voters coincide with a plurality of the nation's) would persuade Texans to bind their electors in this way (and vice versa). Second, the possibility of defection from such an agreement would seem high, especially in close elections like the split decision of 2000. (It might also tempt faithless electors to follow their hearts at the moment of truth.) This rule seems far less likely to produce a stable equilibrium, even among a small number of assenting states, than the winner-take-all, statewide appointment of electors that soon prevailed after 1800.

To my knowledge, an alternative, subconstitutional method of reforming the electoral system in the interest of alleviating the objectionable senatorial

[7] Anyone who thinks that the legislatures remain free to do so after the congressionally designated time by which electors have to be chosen, however, is constitutionally illiterate. In the last presidential election, the Florida legislature would have been free to devise any mode of electoral appointment down to 6 November, but not thereafter.

[8] Robert W. Bennett, "Popular Election of a President without a Constitutional Amendment," *Green Bag* 4 (2001): 241–246.

[9] This concern has been further exacerbated since the 2000 election by the controversies over redistricting in Texas and Pennsylvania, two states in which Republican-dominated legislatures used the increasingly sophisticated techniques of "cracking and packing" to enable their party to dominate each state's congressional delegations.

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bump has so far gone unexplored. That would involve expanding the size of the House of Representatives beyond the arbitrary figure of 435 set in 1911. The premise here is simple. The larger the share of electors that corresponds to the membership of the House, the more the senatorial bump is diluted. This proposal could be defended and rendered attractive on grounds that would not be limited to the composition of the electoral college. The standard Madisonian argument that the quality of congressional deliberation would decline after the House grew too numerous hardly matters in a body that never deliberates in the ways that the Framers would have imagined. The British House of Commons represents a population roughly a third the size of ours, yet seats a hundred more members than our House of Representatives. But as C-SPAN aficionados know, any comparison between question time with the prime minister and the lonely soliloquies our orators deliver to an empty chamber and the amusement of insomniacs everywhere will not redound to the advantage of American rhetoric or the memory of Daniel Webster, Henry Clay, and John C. Calhoun. Moreover, enlarging the House could also be defended on the traditional principle that our representatives should be rendered as accountable to and sympathetic with their constituents as possible.

Whether the nation's capital would gladly welcome another hundred congressmen, with the accompanying impacts on office space, housing in the District, and traffic in the Virginia and Maryland suburbs, not to mention the necessary multiplication of subcommittees to satisfy the newcomers' political ambitions, is another matter. So let us drop the pretense of partial, subconstitutional reform and consider the question of the electoral college at a more profound (if doubtless impracticable) level.

For starters, we should reject the casual notion that the obsolescence of the electoral college is a simple function of the enormous distance and differences that separate our political culture from that of the revolutionary generation. For all practical purposes, the electoral scheme of 1787 was obsolete in 1800. The rapid evolution of political parties during the 1790s had already falsified essential concerns of 1787. What was left was the political logic that belatedly led the Framers to replicate their previous decisions over congressional representation in the formula for allocating electors, so that all three political branches of the new government could be said to embody satisfactory compromises between large and small, and slave- and nonslaveholding states. That impression might have had a useful function in promoting a final harmony within the Convention and in selling the Constitution to the political nation mobilized for the ensuing ratification struggle. It was, however, irrelevant to shaping the political preferences of either citizen-voters or lawmakers thereafter.

A good case can be made that the design of the presidency proved the single most difficult task the Framers faced at Philadelphia, becoming the object of what Madison called "tedious and reiterated discussions" that revolved primar-

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ily around the mode of election and related questions of tenure.[10] The sources of these difficulties were multiple. Although the Framers were clearly retreating from the antimonarchical sentiments that led to the general evisceration of executive power in the state constitutions, most remained unwilling to restore the robust conception of prerogative that, for example, recent administrations have invoked to justify unilateral presidential war making. True, within the first week of debate, the Convention endorsed the idea of vesting the executive power in a single person, to be armed with a limited veto over legislation. But much of the growth in presidential power that occurred during the final month of deliberations seems to have resulted more from a reaction against the Senate than from a Hamiltonian appreciation of the potentialities of a vigorous executive.

More important, however, were the genuine puzzles the Framers encountered in trying to imagine the political dimensions of executive power. In the eighteenth century, executive power was still monarchical power, or the emerging ministerial variant that the Americans knew best from their colonial experience. Even under the limited monarchy of the eighteenth-century British constitution, the discretion and whims of the king still mattered a great deal. The choice of a chief minister remained very much a matter of royal discretion, and although that minister's continuation in power depended on his capacity to maintain the support of Parliament, in practice, the techniques of influence (or "corruption") generally enabled the crown to keep both houses in fairly docile trim. The same body of ideas that led the Americans from resistance to revolution before 1776 also taught them to be mistrustful of ministerial power.[11] But if executive power was to be neither monarchical nor ministerial, what form would it take?

Within the states, the main answer to that question was that the executive was just that: an institution to implement the legislative will, without political influence or real independence, elected by the assemblies for a term of a single year. The exceptions were the second-generation constitutions of New York (1777) and Massachusetts (1780), which provided for popular election of the executive. It is revealing that the upstart George Clinton in New York and the aristocratic John Hancock in Massachusetts emerged as the two most potent governors state politics produced.

[10] James Madison to Thomas Jefferson, 24 October 1787, in Jack N. Rakove, ed., *James Madison: Writings* (New York: Library of America, 1999), 144. The analysis presented in this section draws on Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Knopf, 1996), 244–287; Jack N. Rakove, "The Political Presidency: Discovery and Invention" in James Horn, Jan Lewis, and Peter S. Onuf, eds., *The Revolution of 1800: Democracy, Race, and the New Republic* (Charlottesville: University Press of Virginia, 2002), 30–58.

[11] Bernard Bailyn, *The Ideological Origins of the American Revolution*, enlarged edition (Cambridge, MA: Harvard University Press, 1992), 1–159; see the more focused discussion in Bernard Bailyn, *The Origins of American Politics* (New York: Knopf, 1968), 59–105; and Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1969), 132–150.

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Once the Federal Convention turned to the question of presidential election in mid-July 1787, its perplexity quickly became evident. As the Virginia Plan emerged from preliminary deliberations in a committee of the whole, the executive would be chosen by the legislature for a single term of seven years. This arrangement posed several problems. For those who wanted an enhanced executive to be able to carry out its proper duties free of congressional meddling–"encroachments" in their lexicon, "micro-management" in ours—any form of election that made the executive the political creature of the legislature was troubling. Restricting the executive to a single extended term could only partly relieve this concern. By republican standards, seven years smacked a bit of monarchy, while the ban on incumbents promised to encourage officials less Cincinnatus-like than Washington to maximize their utilities while they could. Most interesting was the idea that the promise of re-election would be an incentive to all the right kinds of ambition that a new-modeled republican constitution should encourage.

In late July, the Framers considered two obvious alternatives to legislative election. One was election by the people in a single national constituency, favored initially by James Wilson and then, after his reservations were overcome, by Madison. It was vulnerable to two objections. One was that a single national electorate would disadvantage southern prospects because of the demographic disparity between a free northern society based on small farmers and free labor, all prospective property owners and citizens, and a southern society that included a massive enslaved labor force completely devoid of all rights and even legal personality. This was the objection that Madison first voiced but then relinquished after the defects of the final mode of election—an appointment by electors—became apparent. The second and fatal objection to popular election was the likelihood that voters in a highly decentralized polity like the United States would lack knowledge about properly qualified national candidates and thus regularly vote for the provincial notables they knew best, preventing any decisive choice from being made without a series of qualifying elections for which no precedents or examples existed. Popular election was a casualty not of the Framers's fear of demagoguery but of an information problem for which they had no obvious solution.[12]

In the face of these difficulties, the initial proposal for an appointment by twenty-five electors, to be named by the state legislatures and to meet in a single assembly, briefly became something of a panacea. But the enthusiasm was short-lived. There was no reason to think that the electors would "be men of the 1st nor even of the 2d grade in the States." By 26 July, the Convention was back to where it had started: legislative election for one seven-year term.[13]

To say that this decision embodied no positive consensus would be an understatement. By the time the Convention returned to the executive in mid-

[12] Farrand, ed., *Records*, II, 29–32, 56–57, 109–111.
[13] Farrand, ed., *Records*, II, 57–58, 99–101, 118–121.

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August, a reaction against the Senate had begun to set in that ultimately worked to enhance the powers of the presidency. But the Framers had not resolved their electoral conundrum. On 24 August, the Convention deadlocked on the "abstract question" of replacing legislative election with an appointment by electors.[14] Rather than debate the issue further, however, the Convention left its resolution to the committee on postponed parts. Its report of 4 September made the key changes, proposing an appointment by electors apportioned in accordance with each state's membership in both houses of Congress. The electors would meet in their states—never assembling "in college," so to speak—and cast two votes each, one for a resident of another state (implying, as Madison observed in a game theoretic analysis, that everyone's second choice would be the collective first choice). Should the electors fail to produce a majority for any candidate, the election would go to the Senate, to decide among the top five.[15]

Herein lay a rub. The solution ingeniously combined the supposed compromises on representation that the Convention had forged in July. The large states gained the advantage in promoting candidates (although the small states already enjoyed their senatorial bump); the small states, the same principle of equality they enjoyed in the Senate whenever the electors failed to produce a majority; and southern states could count their slaves in the allocation of electors by the three-fifths rule. But because the same report also joined the president and Senate in the treaty and appointment powers, the formula for a contingent election violated the underlying desire to make the executive as independent of the legislature as possible. Because many Framers expected that the electors would ordinarily serve as an equivalent to a modern primary, this posed a serious problem that consumed three days of debate until Roger Sherman stumbled upon the idea of placing the contingent election in the House of Representatives, voting by states.[16]

What inferences can we draw from this record? First, the decisions about presidential election are best described as a weighing of the comparative *dis*advantages of different modes of election. The system of electors emerged triumphant because the doubts about its efficacy were less telling than were the killer objections that militated against either popular or legislative election. Rather than view the electoral system as a well-conceived element within the overall constitutional design, we can recognize that it represented a highly experimental leap into a political uncertainty that, in turn, reflected the difficulty of conjuring up the political dimensions of a national republican executive. Second, one should hesitate to conclude that the Framers saw positive advantages in a state-oriented or state-based system of presidential election. As their expressed reservations about both popular election and an appointment by electors sug-

[14] Farrand, ed., *Records*, II, 403–404.

[15] Farrand, ed., *Records*, II, 497–499.

[16] The relevant debates can be found under the dates September 4, 5, and 6 in Farrand, ed., *Records*, II; for Sherman's *apercu*, see ibid., 527.

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gest, they viewed the likely parochialism of voters and electors alike as a problem to be overcome, rather than a laudable advantage in terms of promoting an aggregation of local interests and preferences. Third, we can reject the notion that the Framers imagined the electors as a body of notable citizens capable of making a superior choice. Had they done so, the electors could have met in one place to deliberate and vote until they reached a decision—in the manner of the college of cardinals (admittedly an unlikely example for Americans to emulate). Instead, an offsetting fear prevailed: assembling electors of uncertain qualifications in one place would open them to dangerous influences and the specter of "cabal." Fourth, in the absence of any recorded debate of the point, we should similarly balk at ascribing too much importance—in the grand manner of the plurality concurrence in *Bush v. Gore*—to the decision allowing the state legislatures to determine the mode of appointing electors. In effect, the Framers solved their own inability to determine how electors were to be appointed by deferring and defaulting that decision to the states—an unsurprising action given the lateness of the hour.[17] Fifth, by retaining a decisive role for the national legislature in the contingent election of the president, they acknowledged the importance of having the most qualified national officials choose the president on all those occasions when no individual had the stature to gain a majority of electors.[18]

Whatever can be said about the "original intentions" behind the electoral college, the decisive facts in its evolution were discovered within the first long decade of its operation. In the first two presidential elections of 1789 and 1792, of course, the procedures adopted by the states for the appointment of electors were irrelevant and inconsequential because the election and re-election of George Washington were foreordained. As soon as the office was seriously contested, in 1796 and again in 1800, the appointment of electors and the disposition of their votes became subject to intense political manipulation. This was almost as true in 1796, when Washington's delayed announcement of his retirement might have been expected to retard such maneuvering, as it proved in 1800, when the lessons of 1796 were there to be studied and corrected.

In 1796, the key development involved Alexander Hamilton's efforts to enable Thomas Pinckney, the nominal Federalist running mate, to receive more electoral votes than Vice President John Adams, the party's nominal head. This scheme foundered when New England Federalists smelled a rat. Eighteen New

[17] Here, as in the comparable procedures for congressional redistricting, one can regret the Convention's failure to specify uniform constitutional rules that could have had the effect of reducing or minimizing the political manipulation of elections at the state level. By Madisonian logic, a uniform constitutional rule is less likely to be susceptible to factious manipulation across a multitude of diverse states than one that devolves the decision to locally based majorities.

[18] Note, however, that the electoral system was likely to be most effective when it was judging the merits of an incumbent. On such occasions, the information problem would no longer reign, and electors would be able to make a decisive choice, whether to fulfill the Hamiltonian goal of rewarding proper ambition, or to reject a president who had been found wanting.

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England electors voted for Adams but not Pinckney, not only enabling Thomas Jefferson to take second place, three votes behind Adams, but also preventing Pinckney's election as president outright and Adams's selection as our only three-term vice president.[19] The constitutional requirement that the electors meet and cast their votes in the separate states on the same day had not prevented Alexander Hamilton, the Federalist *eminence grise*, from undertaking just the sort of cabalistic calculations and influence wielding the Framers had dreaded.

The more interesting maneuvers, however, took place as the two parties jockeyed for the rematch of 1800. Most accounts of that celebrated election focus on the glitch in the design of the electoral college that produced the tie between Jefferson and his nominal running mate, Aaron Burr, which in turn threw the election into the lame-duck House of Representatives, where Federalists held the balance of power, and that eventually led to the adoption of the Twelfth Amendment requiring electors to ballot separately for president and vice president. In fact, the preliminary maneuvers governing the appointment of electors are far more revealing of the emerging political logic of the system that the Framers had invented.

In 1796, Jefferson had not only eclipsed Pinckney to become vice president, but had fallen only two electors short of becoming president himself. Those two votes could have been found in the Republican heartland states of Virginia and North Carolina, where electors were chosen by districts, and from each of which Adams had managed to snatch a single vote.[20] Going into 1800, the advantage of converting to a winner-take-all, statewide mode of appointing electors seemed obvious to the Virginia assembly. Alerted to this development, the solidly Federalist Massachusetts delegation to Congress urged the General Court back in Boston to follow suit and not risk losing a vote or two to pockets of Republican strength in the Bay State. Rather than take any chances with the electorate, the legislature arrogated the appointment of electors to itself.[21] Meanwhile, in New York, Federalists had confidently assumed that an election by the state legislature that they expected to control would give all that state's electors to their party (although Hamilton was once again maneuvering to pre-

[19] Richard P. McCormick, *The Presidential Game: The Origins of American Presidential Politics* (New York: Oxford University Press, 1982), 52–57; and see Joanne Freeman, *Affairs of Honor: Political Combat in the Early Republic* (New Haven, CT: Yale University Press, 2001), 213–229. Note that in the cabalistic numerology of *gematria*, the letters that form the number eighteen (the number of defecting New England electors) also form the Hebrew word *chai* (life), implying that the defectors were, in fact, giving life to Jefferson's candidacy. One should not pursue these calculations too far, however.

[20] See Charles Pinckney to James Madison, 16 May 1799 and 30 September 1799, in Robert A. Rutland et al., eds., *The Papers of James Madison* (Charlottesville: University Press of Virginia, 1962–1991), XVII, 250–251, 272.

[21] See the circular letter from the Federalist members of the congressional delegation to correspondents in Massachusetts, 31 January 1800, in *Proceedings of the Massachusetts Historical Society*, 43 (1910), 652–654 and the discussion in James Banner, *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts* (New York: Knopf, 1969), 226–227.

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vent those votes from going to Adams). Burr's superb political organization in New York City, however, gave control of the assembly to the Republicans. Hamilton then urged Governor John Jay to call the outgoing assembly into special session to enact a districting law that could preserve some votes for the Federalists. He justified this expedient on grounds of sheer political and moral necessity, but Jay treated the request as a matter of honor, docketing Hamilton's letter with the comment: "Proposing a measure for party purposes wh. I think it wd. not become me to adopt."[22]

In fact, no fewer than six states changed their electoral law for the occasion. They acted not in response to deep constitutional values in a contest where such values were supposedly at stake, but from purely strategic calculations of partisan interest. But that did not mean that the choice of modes for appointing electors would remain permanently open to innovation and alteration. Once some states began to move decisively to the winner-take-all model, it is easy to see why that would become the equilibrium that other states would emulate. Why should one state risk diluting its electoral impact when other states were maximizing theirs? The only condition under which adhering to a district rule would make sense would occur when the party controlling the legislature worried that it would not enjoy similar success in a presidential election. But the circumstances of controlling the legislature would likely convince partisan lawmakers to err on the side of optimism, hoping for the greater return to be provided by winner-take-all than the lesser dividends of salvaging districts.

All of this makes sense from the perspective of partisan calculation and helps to explain why the current Maine and Nebraska variant is unlikely to be widely replicated elsewhere. But does a winner-take-all statewide rule make sense from the vantage point of either voters or the state electorates they comprise? Or does a state-based system of presidential elections that leverages the electoral power of states in inverse proportion to their population make sense as an essential element of federalism? Those are the critical questions to which I now turn.

Two arguments from the constitutional deliberations and debates of the late 1780s provide a useful point of departure because both implicate the underlying claim that a state-based system of presidential elections is integral to the principles of federalism. The first and simpler argument involves asking whether electoral mechanisms are essential to the existence and health of federalism. The second, more nuanced and even elusive—but ultimately more powerful—argument requires asking whether political behavior and the preferences that voters express are connected to their citizenship in particular states, conceiving of states as jurisdictional entities whose legitimate interests and political rights somehow reflect the disparities of population among them.

The first argument stems from the Antifederalist charge that adoption of the Constitution would lead to a genuine consolidation of all effective power in

[22] Alexander Hamilton to John Jay, 7 May 1800, Harold C. Syrett, ed., *The Papers of Alexander Hamilton* (New York: Columbia University Press, 1962–1979), XXIV, 464–466, 467 n. 4.

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the national government, leaving the states either to wither away or to survive, barely, as hollow jurisdictions. Federalists rebutted this charge by pointing to the essential role that the states would play in determining the political composition of the national government. State legislatures would elect senators directly while designing rules for the election of members of the House of Representatives (subject to a rarely exercised corrective power of Congress) and the appointment of presidential electors. The states would also regulate the electorate, either through legislation or by constitutional provision. Anti-Federalists still doubted that these functions would counterbalance the open-ended invitation to legislate contained in Article I, Section 8 (including, of course, the Necessary and Proper Clause), the capacity of the national government to control the most productive sources of revenue, and the greater majesty of the Supremacy Clause.

Twenty-one decades later, universal suffrage, frequently expanded and occasionally enforced by the federal government, and the popular election of senators and presidential electors may have diluted the value of the Federalist assurances of 1787–1788 even further, leaving the decennial reapportionment mess in the states as the sole area in which state governments retain direct influence over the national political process. What all this has to do with the viability of American federalism is difficult to discern. On the one hand, this imposition of democratic and egalitarian norms has clearly reduced the degree of discretion that states could theoretically claim as quasi-sovereign entities. But this pressure against the states comes from both above and below—that is, from both nationalist and populist sources. Anyone wishing to argue that federalism would be strengthened by allowing states to exercise greater discretion over elections would have to swim upstream against very powerful currents. The logical starting point for such a campaign would be to urge the state legislatures to resume their constitutional authority to appoint electors or seek the calling of a constitutional convention to restore their right to elect senators.

The more important point, however, is that federalism is not primarily about modes of election, but rather about the division of duties between national and state government. The nationalization of politics and election procedures since 1789 has obviously not brought the dire effects that Antifederalists would have predicted. The states survive as healthy jurisdictions, still enacting numerous laws that regulate the fabric of daily life and carrying out many of their traditional functions. Of course, the net allocation of the responsibilities of governance between the Union and the states has shifted over time. But this has been in response to developments that transcend alterations in the modes of election, as majorities have been aggregated in favor of national action in defiance of the inertial and centrifugal forces that have typified American politics. Presidential elections affect the structure of American federalism primarily when they produce results that serve to advance a strong political agenda that affects this balance. In the twentieth century, for example, one could suggest that the elections of 1932, 1936, 1964, and 1980 all had major consequences

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for the state of federalism. But that was not because of the state-based structure of elections per se, but rather because the balance of national and state authority was implicated by the political results. In some elections, federalism is itself at issue, explicitly in terms of campaigns, or implicitly in terms of results. But those are the exceptions.

There is, however, a more fundamental criticism of the idea that a state-based system of presidential elections is worth preserving on federalism grounds regardless of the damage it does to the democratic principle of the equality of citizens through the leveraging factor of the senatorial bump. This criticism implicates a second, more subtle, but also more powerful element of the constitutional deliberations of the late 1780s: whether our political attachments as voters are truly linked to our residence in individual states, particularly in ways that reflect the size (that is, the population) of those states and their existence as coherent political communities.

If states and their citizens are to receive somewhat different electoral weight as a function of the senatorial bump, some persuasive legitimating principle other than the fact that the Framers endorsed the idea should be available to justify that calculus. No such principle exists. Or rather, if such a principle does exist, it was only persuasive at the original moment of constitutional foundation, as a necessary cost of reaching agreement, but its rationale disappeared as soon as agreement was reached, never to operate convincingly thereafter—for reasons that James Madison well explained in his efforts to deny the states an equal vote in the Senate.

What could this abstract statement mean? The size of the population of a state was arguably a legitimate interest at the moment when the Constitution was being framed, but only because delegates necessarily represented more and less populous states and had an incentive and even an obligation to stake out positions that would maximize their constituents' collective political influence. When rules of voting are at stake, delegates can be expected to assert and protect those interests. But does that make those interests legitimate over the long run, once the Constitution itself has gone into operation?

Madison thought not, and a significant although regrettably overlooked aspect of his theory of faction was devoted to explaining why his argument against an equal representation of states in the Senate rested on the understanding that the size of a state would never again affect the political behavior of voters or representatives after the Constitution was adopted. All the real determinants of political behavior depended on the interests, opinions, and passions of individuals, and these in turn were tied to characteristics that owed nothing to the size of states and everything to such factors as occupation, wealth, religious affiliation, ethnic identity, and so on. As Madison well recognized, the most striking and potentially threatening characteristic that distinguished Americans was whether they lived in states whose social structures rested on the presence or

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absence of slavery.[23] That was a long-term, seemingly permanent interest that the Constitution could legitimately accommodate because slavery would continue to divide Americans indefinitely.

The size of states, however, would not have a similar effect. Subsistence farmers in Massachusetts and Rhode Island would not think differently because one was classed as a large state in 1787 and the other was not. Merchants in Baltimore and Philadelphia might share common interests in regard to the dominant vectors of Atlantic commerce or act as rivals competing for the same market, but the respective classification of their states as large and small would not be a factor. Different communities might think strategically about the likelihood of forming winning political coalitions on the basis of the relative size of their populations, but the interests they pursued would not be differentiated in the same way.

One can translate this basic insight into a modern context with a number of examples. A soybean farmer descended from German Lutheran immigrants of the mid-nineteenth century is not likely to view politics differently depending on whether he lives on the east bank of the Mississippi River in Illinois or the west bank in Iowa. Working-class weekend hunting enthusiasts in the venison belts of Michigan and Pennsylvania will not think differently from other Second Amendment firsters in Idaho and Wyoming. Evangelical Baptists in Texas and neighboring Arkansas will similarly vote alike, as do African Americans on the South Side of Chicago and their cousins in the Mississippi delta who never rode the Illinois Central north.

If there is no correlation, therefore, between the size of the states in which voters live and the political preferences they express—especially when voting in a presidential election—then why should population provide a legitimating basis for the differential calculus of the electoral college? One answer might be that the residents of small states deserve extra compensation, or leverage, precisely because they stand to be outvoted, and their essential interests trampled underfoot, by the mean-spirited domineering majorities of the big, bad, populous states. But this objection is fallacious because neither small- nor large-state voters cast presidential ballots on the basis of the size of the states in which they live. They may vote as farmers or urbanites or suburbanites, religious enthusiasts or militant secular humanists, or for any other reason. But again, the size of the state has no bearing on the preferences voters express.

This account of the irrelevance of size in turn operates to refute another ostensibly federalist argument for the electoral college: that the existence of multiple constituencies works to "diffuse" (a Madisonian word) political activity more broadly across the electorate, and indeed the countryside, than would be the case should the president be elected by a national popular vote. This rationale appears equally problematic on several grounds.

[23] On this point, see especially his 30 June 1787 speech in Federal Convention, Farrand, ed., *Records*, 486–487.

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The first, and arguably most important, is that a state-based electoral system actually narrows rather than broadens the focus of political attention, as measured by the various indices of media buys, tarmac appearances, and the other activities that constitute a modern presidential campaign. The presidential election of 2000 illustrated this point perfectly. The sophistication of modern political polling enables campaigns to direct resources only to those "battleground states" that are "in play," that is, where the candidates are competitive. In 2000, those states included six that replicated the narrow division in the national electorate—Florida, most famously, but also New Hampshire, Iowa, New Mexico, Washington, and Wisconsin—as well as West Virginia, Michigan, and Pennsylvania. Most of the rest of the country—including the states that form the big L of the Republican coalition that sweeps down the mountains and then marches, like a great Sherman, through the old Confederacy until it hits the sea—could expect to be ignored.

One could speculate as to whether size might weakly correlate with competitiveness. By the original logic of Madison, for example, one would expect large states to be more competitive than small states because it is arithmetically easier for majorities to coalesce in smaller than in larger communities. Or conversely, one could speculate that large states should prove more competitive because the greater diversity of interests they contain should make it easier to identify the median point on the political spectrum that the weaker party can strive to capture by picking off smaller elements of the dominant majority coalition. The key fact to be recognized, however, is that the competitive playfulness of a state is essentially an accidental result of the different distribution of population groups within the largely arbitrary geographic boundaries that provide the minimal territorial definition of statehood. Competitiveness, in a sense, just happens as a by-product of demography, rather than as the diffusive effects of the electoral system.

It is nonetheless objected that a national popular vote would confine campaigning to the great metropolitan areas, to the exclusion of the heartland. Candidates and resources would flock to the great urban-suburban communities of the coasts and Great Lakes, leaving the smaller cities, towns, and rural areas of the great interior to wither in political isolation.

One could answer this concern in several ways. The first is to apply what might be called the Willy Sutton rule of politics, with a twist. Candidates *should* be encouraged to seek out the largest concentrations and numbers of voters, wherever they may be found, for the same reason that Sutton robbed banks. Why that system would be inferior to one that concentrates resources only in jurisdictions that remain competitive would be worth explaining. The logic of the current system encourages candidates to focus on those issues and approaches that seem most likely to sway undecided voters or mobilize loyalist turnout in the contested jurisdictions. By contrast, the challenge of forming a national plurality or majority is more likely to generate broad-gauged strategies for mobilizing voters than one that encourages precision targeting within spe-

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cific communities. Moreover, the parties and campaigns would discover a greater incentive to enhance turnout across the country than that currently provided by the stunting logic of the electoral college. In a national electorate, a vote would be a vote that counted wherever it was cast, and both majority and minority parties in states that are unlikely to be "in play" in any presidential election in the foreseeable future would be rewarded for developing methods of increasing turnout. For those who believe that encouraging voter participation is in itself a healthy objective, that potential advantage would outweigh the downside risk of mounting a national recount in the wake of an election that found the leading candidates separated by a 1960- or 2000-style eyelash.

The greater risk that Professor Best evokes in her paper, however, is that establishing a national electorate for the presidency would deliver a deep insult, even a mortal blow, to American federalism more generally. This is pure hyperbole, and the claim founders on two main objections. First, the idea that state-based presidential elections fulfill important values and functions of federalism remains vulnerable to the criticisms already registered. Second, it is difficult to see why a national presidential vote would undermine all the other protections for federalism that already exist, whether defined in terms of the persisting and resilient division of tasks between the national and state governments, or the conjuring of the ghost of Spencer Roane in the federalism jurisprudence of the current Supreme Court, or the political safeguards provided by the state-based election of both houses of Congress. If the last does not protect the local concerns that are often equated (perhaps not always correctly) with federalism, it is difficult to see how the blunt instrument of presidential election could possibly serve the same values more effectively. If enhancing federalism is truly Professor Best's concern, she should be waging not a defense of the electoral college but an offensive campaign to repeal the Seventeenth Amendment. Nor need we fear that the states will ever be stripped of their equal vote in the Senate, since that is the one clause of the Constitution that is immune to Article V amendment.

All of these arguments are, of course, easily dismissed on grounds of pure political impracticability. That certainly is the case if one refuses to discuss them at all. The last presidential election suggests, however, that we ought to hold both the Constitution and our own political behavior subject to a higher standard. In my view, the principle of the equality of all citizens, regardless of the accident of their residence in one state or another, is the highest standard we could apply.[24]

[24] For a more comprehensive development of these and other criticisms of the electoral college, see the forthcoming work of George C. Edwards, III, *Why the Electoral College Is Bad for America* (New Haven, CT: Yale University Press, 2004), which came to hand, in galley form, too late to be incorporated into this article.

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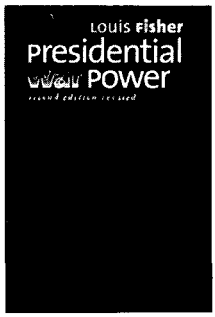

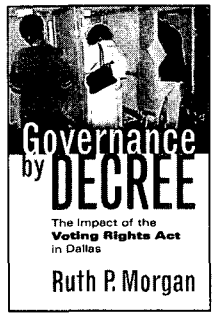

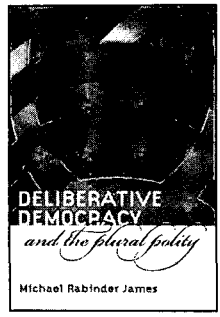

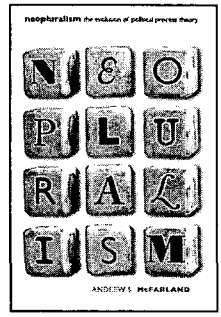

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Presidential Selection: Complex Problems and Simple Solutions

JUDITH A. BEST

For every complex problem there is a simple solution, and it is invariably wrong.

—H.L. Mencken

Our method of selecting a president is not entirely what the Framers of the Constitution envisioned in 1787. It has changed and developed in several ways, but it still is compatible with and supportive of the American idea of democracy. The American idea of democracy is complex, not simple; federal, not all-national; consensual, not strictly majoritarian. The political slogan "all power to the people" is not one our Founders would have endorsed. Their slogan was "all power to no one," not even the numerical majority. As James Madison pointed out in *The Federalist, No. 47*, all power in the hands of the many is a form of tyranny. The goal of the Founders was liberty, and because they had decided on a democratic republic, they had to find a way to balance liberty and equality. Their solution to the problem of majority tyranny was a system of concurrent majorities that not only divides the powers of the national government by function, but also divides, shapes, and structures all governing majorities under a federal principle. This form of government seeks more than majority rule; it seeks majority rule with minority consent.

To gain that consent, it must give minorities of all kinds the opportunity to be a part of the majority. These opportunities are created in two ways: first,

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by dividing government into three different branches and further dividing the legislature into two chambers; second, every part of the government is based on separate and different kinds of majorities structured under the federal principle. To fill all our national elective offices, majorities must be formed either in each of the fifty states or in each of the 435 congressional districts or in some combination of the two. Thus, minorities have hundreds of opportunities to be part of a state and/or district majority.

The electoral college is but one part of this complex form of government. In fact, it has become the very model of our entire form of government because it is both democratic and federal. Though federal from the beginning, the electoral college has evolved, and today its distinctive element is not the office of elector but rather the federal unit rule (also known as the winner-take-all rule), which awards all of a state's electoral votes to the winner of a statewide popular vote plurality. Every state has as many electoral votes as it has representatives in the whole Congress. This establishes a balance between our policy-making bodies—the executive and the legislature. This balance is essential because the goals of the nation are complex. The Constitution lists six different goals in the preamble: union, justice, domestic tranquility, the common defense, the general welfare, and the blessings of liberty. As the goals for the whole complex government are multiple and interdependent, so are the goals for presidential selection.

The Goals of Presidential Selection

The first and most obvious goal is to select a president who can govern this vast and heterogeneous nation. This means he must have a broad, cross-sectional base of support. Broad distribution of popular support is far more important than depth of support. To be able to govern, the president does not have to win states in all sections of the country, but he has to come close. A president who wins the office by running up huge margins of 80 percent to 20 percent in the eastern seaboard and the midwest and loses by similar margins in the south and the west is not a president who can govern. In fact, he may be a president who will face a civil war.

A president does not have to win a majority of the popular votes; George W. Bush is our seventeenth minority president. His predecessor, Bill Clinton, was twice a minority president. To be able to govern, a president does not even have to gain a plurality of the popular vote—if the election verges on a tie. The first of our two runner-up presidents, Benjamin Harrison, was chosen in 1888 in an election that was close to a dead heat—a margin of 0.9 percent. There was no popular outcry. George W. Bush became our second runner-up president in an even closer election. Once again, there was almost no popular concern about his runner-up status. Though he won thirty states, he lost the national popular vote by a margin of 0.5 percent—a margin smaller than the statistical margin of error. Despite this, in less than two years, he was able to achieve a sustained

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and exceptionally high level of approval in the opinion polls. We need to remember that a presidential election is usually a snapshot, depicting the electorate on one day only. Presidents who do not have mandates on election day can build them in the weeks and months that follow. And presidents who do have mandates on election day can lose those mandates or even the office itself in the weeks and months that follow if they do not maintain widespread support. Richard Nixon, who won in a landslide in 1972, had to leave office under threat of impeachment.

The Framers wanted a president who could govern *precisely* because he would have a sufficiently broad, nonparochial, nonsectional base. As originally intended, the electoral college process was designed to nominate/select a continental character like George Washington, the people's presumptive choice—not a state's favorite son. While it was clearly possible that the college itself could make the choice—and did so in the very first presidential election—the general expectation of the time was that the House of Representatives would make the choice under the state equality principle—each state delegation would have one vote.

Since the adoption of the Constitution, the electoral college has been changed by the Twelfth Amendment (designed to reduce the possibility of a tie in the electoral votes), by state laws mandating popular elections, by the federal unit rule that has been adopted in all states but two (Maine and Nebraska), and by the development of the two-party system, which has taken over the original nominating function of the college and turned the electors into mere ciphers. The process has changed; the primary purpose has not.

On this point of selecting a president who can govern, the electoral vote system is undeniably healthy. Under it, the presidency has grown in power and prestige, and as a nation, we have set an example for the world in the peaceful transference of power. We have had only one true breakdown, the election of 1860, when Abraham Lincoln's name was not on the ballot in southern states—not that that would have made a difference. He won only 39.79 percent of the popular votes, several states seceded before he was inaugurated, and immediately after the inauguration, the Civil War began. In 1860, the country was so bitterly divided that, I believe, no electoral system could have prevented a civil war.

A second goal is to have a swift, sure, clean, and clear decision. The presidency is an office that may never go empty, and in our time, when the United States is the only remaining superpower, not only our stability but world stability makes this imperative. It is so imperative to fill the office quickly that we have had one president, Gerald Ford, who attained the office without winning any popular votes for president or vice president. Ford, who had been nominated by Richard Nixon to fill a vice presidential vacancy and confirmed by Congress under the provisions of the Twenty-fifth Amendment, became president when Nixon resigned. The uninterrupted flow of government has a higher priority than single-minded majoritarianism.

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There are many lessons to be learned from the election of 2000, but surely there are at least two: first, a swift and sure decision is more important than a count that is 100 percent accurate and second, the electoral vote system quarantines fraud, error, and court challenges. Demands for recounts and court challenges will be confined to a few states. In 2000, without that quarantining system, the nation would have had fifty Floridas. Every ballot box in the country would have been subject to recounts and court challenges. The process could have gone on so long that on Inauguration Day, the Speaker of the House could have been sworn in as Acting President of the United States under the provisions of the Twentieth Amendment.

Unless it were only for a day or two, an acting president would be a calamity—a real constitutional crisis! What could an acting president actually do? Certainly not lead or govern. Every hour of every day the House of Representatives would have the power to name his legitimate replacement. Under such a circumstance, could he deal with foreign nations? Could he be an effective Commander in Chief? Could he name a functioning cabinet? Could he create a budget, or an energy plan, or a tax plan? In *The Federalist, No. 70*, Alexander Hamilton said, "Energy in the executive is a leading character in the definition of good government."[1] An acting president would be both frail and feeble.

Delay is dangerous; recounts, court challenges, runoffs, and contingency elections are divisive. The final cause—the goal—of the election is to select a president who can govern; the accuracy of the vote is merely one part of the efficient cause—the means. The means should not destroy the end. Accuracy is important, but it is not more important than a fairly swift decision. An adding machine is not a political process. Recounts produce new totals that may not be more accurate than the original total. The statistical margin of error in machine recounts is more than 1 percent and is even greater for hand recounts. In close elections, the premium on fraud increases. No election system, including direct nonfederal election, can ever totally eliminate counting errors and fraud. On this point, the current system has been quite successful. Despite six elections in which the popular vote margin between the two major candidates was less than 1 percent, we have always had a president by inauguration day, and we usually know who the new president will be by the morning after election day.

A third goal is that the presidential selection process should preserve our moderate two-party system. The two-party system and democracy have lived in a symbiotic relationship for most of our history. Multiparty systems are notoriously unstable and would be particularly dysfunctional in our presidential system, with its separation of powers, where, once the government is formed, the coalitions are designed to be more institutional than purely partisan. The separation of powers requires first the formation of two coalitions, one in the House and one in the Senate. These two coalitions must then form into one in order to pass bills and present them to the president, who, though a fellow partisan

[1] Clinton Rossiter, ed., *The Federalist Papers* (New York: New American Library, 1961), 423.

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with some members of the legislature, is independent of both chambers. He also has a larger electoral base—a base as complex as that of the whole Congress.

As the two-party system is a major contributor to our national stability and to our moderate politics, preserving it is an important goal. Most political scientists think that the cause of the two-party system is a single-member district, plurality election. A single-member district produces one winner within the district, and under a plurality election, the district winner is the man with the most votes, even if he does not win a majority. With the ratification of the Twelfth Amendment and the nearly universal adoption of the unit rule, there are forty-eight states that each form a kind of a single-member district; the forty-ninth is the District of Columbia.

Even if the electoral vote system is not a cause of the two-party system in presidential elections, more than 150 years of experience clearly indicates that not only is it quite compatible with the two-party system, it has strong biases in its favor. It is biased against all minor parties, national, sectional, and ideological. It is biased against extremist, self-nominated, and single-issue parties and candidates. These biases arise from the fact that under the federal principle, popular votes cannot be added across state lines and the unit rule prevents the division of electoral votes within a state. They also arise from the fact that the system converts popular pluralities into electoral vote majorities, thereby precluding contingency elections in the House of Representatives.

Not all presidential election plans share these healthy biases. Any system that abolishes the federal unit rule or has a runoff rule with a majority or substantial minimum requirement for victory will encourage the entry of multiple minor parties and will thereby undermine the goal of a swift decision. The incentive for interest groups to work in and through the moderate two-party system would be weakened. In presidential elections, we could see the black party, the Muslim party, the Hispanic party, the military party, the pro-life party, the no-death-taxes party, the anti-gun party, and the left-handed vegetarians party. Losing candidates for a party's nomination would probably continue their fights into the general election. If the two parties lost control over the crucial nominating function, they would cease to be major parties. The coalition building that takes place before the general election would break down and be postponed to the runoff. Runoffs would mean more recounts and court challenges, first to determine if any candidate had attained the required percentage and second to determine which two candidates would be in the runoff. Furthermore, it is possible that the runoff could be very close. The post–general election trading could harden positions, embitter the electorate, and lead to recounts and court challenges of the results of the runoff. So the loss of a moderate two-party system could corrode both of the prior goals: a swift, sure decision and the ability of a president to govern.

Fourth, an electoral system should provide politically effective representation—that means voices are heard, interests of all kinds are represented because they are consulted and can be part of a majority coalition. An election is

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not like a census. An election is not designed to break down the population into separate, isolated individuals, to treat them as mere numbers. It is designed to bring together the largest possible support for the winner. American elections seek majority rule with minority consent; this requires a political process, not an arithmetical process. The political process mandated by the Constitution is federal. We speak of a "national election day," but this is a misnomer. The correct name is concurrent (state-by-state) election day for national officers.

Under the electoral vote system, everyone's vote does count the same—in the voter's own state. The electoral system does not provide national arithmetical equality; it does not provide each voter with an equally weighted vote nationally. But neither do our elections for senators and congressmen. Critics of the electoral college talk of "lost" votes and "wasted votes." The "lost" vote is a popular vote that does not produce any electoral votes. In fact it is not lost because, unless there was fraud or error, it was counted in your state. It simply means your candidate lost in your state, you didn't lose your vote. The "wasted" vote is a vote in excess of the plurality a candidate needs to win a state's electoral votes. This vote cannot be added across a state line to help your candidate in another state. And people know that they cast their votes as state citizens. The media report it this way: Bush won Texas; Gore won New York. So from a voter's perspective, it could just as well be called an "insurance" vote or a "mandating" vote. From a candidate's perspective, it is the incentive to create a broad, cross-national, inclusive coalition—to win in many states rather than to promise everything to the people in a few states and win them by a landslide. It is the incentive to build a concurrent majority.

We call our elections races; races are tests of skills. Why is the World Series champion the team that wins the most games rather than the team that scores the most runs overall? Sports fans will respond: winning the most games is a better test of the strengths and weaknesses of the contending teams. The president must win states because a vote distribution requirement is a better test of the candidates' abilities to govern—to build and to sustain the broad critical mass of support needed to govern. If we change the rules, we will change the game, and we will change the skills and strategies needed to win. If we abandon the win-states requirement, we will undermine or destroy the candidates' incentives to build concurrent majorities rather than majority factions.

Our entire political system is a system of concurrent majorities in which each organized interest has some access to the centers of power.

> The principle of the simple numerical majority is not the American idea of democracy because it rests on a fallacy, the fallacy that the numerical majority are the people and that any restrictions or conditions set upon the rule of the numerical majority are restrictions on the rule of the people. Let us remember that the numerical majority is merely a part of the people. . . . The principle of the concurrent majority does set conditions on the rule of the numerical majority. It sets a distribution condition. It says numbers are not enough for legitimacy. It says we must take into account the fact of group formation and group alliance; we must take into ac-

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> count the intensity of preferences, we must take into account the geographic distribution of interests.[2]

The principle of the concurrent majority is, and has been, the American idea of democracy because the size of the popular vote is not sufficient to maintain liberty or to establish justice.

Fifth, a presidential selection system should preserve the separation of powers, not only to preserve the independence and energy of the presidency, but also to preserve the integrity, perceived or actual, of the legislature and the judiciary. Once Congress or the courts gets involved in the decision, suspicions of corrupt deals and of partisan "judging in one's own case" arise, and there will be charges of stolen elections.

A decision for a separation of powers was the first substantive decision made in the Constitutional Convention. Because the Framers concluded that the legislature is the most dangerous branch of government in a republic, they were especially concerned about presidential independence. They spent months trying to find an alternative to Congress as the electing body. While they could not, they decided presidential independence meant that the president would have to be limited to a single, long term. Finally they found something they thought would work. The electoral college was created as a kind of surrogate Congress, but no member of Congress or anyone holding office under the United States may serve as an elector. The important point is that the college is not, like Congress, a continually existing body with enumerated and implied legislative powers. And it does not have the power to impeach and convict the president. It exists for only one day, and then the electors are out of office.

The one part of the original plan that does not serve presidential independence and the separation of powers is the contingency election in the House, but the original plan was changed with the Twelfth Amendment. Among other things, this amendment made House contingency elections very unlikely because it largely took away the nominating function of the college. It did so by requiring the electors to cast two separate ballots, one for president and one for vice president, rather than the original plan of casting two ballots for president, one for a candidate not from the elector's state. The Twelfth Amendment, the rise of the two-party system, and the adoption of popular elections and the unit rule in the states have made contingency elections obsolete. The last House contingency election was held in 1824. In that election, there were four strong candidates without party designations; in six states, there was no popular vote and the state legislatures chose their state's electors.

The adoption of the unit rule has been particularly important in supporting the separation of powers, thus serving presidential independence and energy because it converts popular pluralities into the constitutionally required elec-

[2] Judith A. Best, Testimony, U.S. Senate, Committee on the Judiciary, Subcommittee on the Constitution, *Hearings: Direct Popular Election of the President and Vice President of the United States*, 96th Cong., 1st sess. (Washington, DC: U.S. Government Printing Office, 1979), 254.

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toral vote majorities. It has a magnifier effect that keeps Congress out of the decision. In 1880, the closest election in our history—a margin of 0.1 percent—it converted James Garfield's popular vote percentage of 48.3 percent into an electoral vote majority of 57.9 percent. In 1992, the magnifier effect worked again despite a strong challenge from third-party candidate Ross Perot, who won 18.9 percent of the popular vote and no electoral votes. Bill Clinton's popular plurality of 43 percent was converted into an electoral vote majority of 69 percent. Even in years when minority party candidates won some electoral votes, the magnifier effect produced electoral vote majorities. The unit rule's value is twofold: first, it makes electoral vote majorities the rule, effectively shutting the door on contingency elections in the House and giving us a swift and sure decision; and second, it radically reduces the possibility of a runner-up president, for, in every election but two, it has worked to the advantage of the undisputed popular plurality victor even in extremely close elections.

The bottom line is that the system evolved toward keeping Congress out of the selection process, and that supports the separation of powers. On the other hand, in close elections, congressional challenges to the statewide counts or even legal challenges are still possible. However, since no selection system can prevent close elections or fraud, there is no way to ensure that neither Congress nor the courts will have any role to play. The separation of powers principle was never intended to create impenetrable walls. Indeed, it is essential to be able to remove the president for cause by impeachment and conviction, and to have the power to provide for vice presidential vacancies and presidential disabilities. And because we must have laws against fraud and corruption, the courts must have the power to decide such cases and controversies.

Last and by no means least, a presidential selection system should preserve the federal principle. This goal is directly connected to the previous one because the separation of powers and the federal principle work in tandem—they are the two fundamental structural principles of the Constitution. They are the two load-bearing pillars. If we knock down the federal pillar, the separation of powers will fail. The states are not administrative agencies of a unitary government; they are the building blocks of the whole federal government. And because they are the ratifying agents for constitutional amendments, the content of the Constitution itself depends on them. In addition, the federal principle is the fulcrum of the entire government, and because it is, it serves to balance local and national interests while creating political rather than solely arithmetical majorities.

Because there are so many goals, the selection of the president is a complex problem. The evolved electoral vote system, though not perfect, has largely been a success in meeting those goals. It has prevented contingency elections and supported the separation of powers, usually given us a swift and sure decision, nurtured a moderate two-party system, quarantined fraud and court challenges, given candidates the incentives to build a broad, cross-national base so

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the winner can govern, and given all kinds of minorities the opportunity to be part of a majority coalition.

Nonetheless, for over thirty years, the proponents of direct election of the president have claimed that it is a simple idea whose time has come. One of the many charges leveled against the electoral vote system is that it is complex. This charge, at least, is true. Arthur Schlesinger, Jr. was right when he said, "It is impossible to explain to foreigners. Even Americans don't understand it."[3] But as Schlesinger clearly understood, its complexity is the cause of many of its virtues, not the least of which is that it is a part of, in Schlesinger's phrase, "the complex balance of the whole constitutional system."[4] It may be impossible for foreigners to understand it, but I think Americans can. There is some evidence. While polls show that approximately 60 percent of Americans want to abolish the electoral college, a *Washington Post*/ABC News poll taken in the wake of the election of 2000 revealed that when people were asked if they would do so if it meant that candidates might pay less attention to smaller states, only 42 percent favored direct election. Americans can learn why a democratic republic is not enough, why a federal republic is essential to both our liberty and our stability.

The Star of Our Solar System: The Federal Principle

Because it can produce a "runner-up" president in elections that verge on a tie, and because it prohibits the aggregation of votes across state lines, over a thousand constitutional amendments have been offered to change the system. Most of today's reformers support what they call a direct popular election. But as Martin Diamond pointed out, "The label given to the proposed reform, 'direct popular election,' is a misnomer; the elections have already become as directly popular as they can be—*but in the states.*"[5] He was right. For nearly 150 years, we have had de facto direct popular elections of the president in all the states. De jure, of course, the popular votes are for each state's electors, who are expected to be faithful. The casting of the electoral votes is now a mere ceremony. Out of over 21,000 electoral votes cast, only eight to twelve have clearly been cast by faithless electors. And none was intended to or did change the outcome. As I pointed out in a recent television interview, a faithless elector who did change the outcome had better have a seat on the next moon shot; otherwise no one could guarantee his safety.

What these reformers actually propose is direct, popular *nonfederal* presidential elections. They want to exempt the office of the president from the constraints of the federal principle. Recognition of the fact that this reform is an

[3] Arthur Schlesinger, Jr., "The Electoral College Conundrum," *The Wall Street Journal*, 4 April 1977.

[4] Ibid.

[5] Martin Diamond, *The Electoral College and the American Idea of Democracy* (Washington, DC: American Enterprise Institute, 1977), 7.

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attack on the federal principle is important because the Framers proposed and the people, through their representatives to state constitutional conventions, ratified a constitution that created a democratic federal republic. The infrastructure of the entire government is federal. No national governing decision of any kind in this country (including the ratification of the Constitution itself) has ever been made by adding votes across state lines. We cannot consider the presidency as a totally separate institution because it is just one part of a governing process that is a complex whole. As John Kennedy said during a congressional debate on presidential elections in 1956, "It is not only the unit vote for the Presidency we are talking about, but a whole solar system of governmental power. If it is proposed to change the balance of power of one of the elements of the solar system, it is necessary to consider the others."[6]

When we look at just one planet in isolation, we may not see its dependence on the sun and the other planets. Michael Glennnon says, "the convention unfortunately settled on a presidential selection system lacking a unified theoretical rationale. Even at the electoral college stage, it did not set forth a clear philosophy of democracy."[7] Perhaps so, for the Framers were not philosophers working in the abstract, but rather practicing politicians who had two working principles, union and balance. They had varying ideas about the latter: some thought in terms of a balance of classes, others of a balance of interests, and still others of a balance of powers. Because the Framers had to apply these two working principles in a very specific time and place, and among the people of thirteen different states, states with long-standing local traditions, cultures, and circumstances that could not be ignored if they were to achieve union, they had to adopt the Connecticut Compromise—state equality as the base for state representation in the Senate, state population as the base for representation in the House. Having adopted this compromise for the legislature in the last days of the convention, they turned to it again to tailor the selection of the president to the selection of the whole Congress.

I suggest that in so doing, the Framers stumbled upon a new theory of a balance and democracy—a new kind of federal republic—a new sun with a configuration of planets very different from those seen in the past. That they did not see the full ramifications of this new theory at the time is not surprising. Inventors and discoverers rarely, if ever, anticipate the full utility of their finds. Glennon is right; they were ambivalent about the presidential selection process: "On what theory of federalism should that process be based? Would the system reflect differences in the states' populations, or would the states be considered equal sovereignties with each casting one vote?"[8] In the end, they chose both, fused together. We call it the federal principle.

[6] John F. Kennedy, *Congressional Record*, vol. 102, pt. 4, 84th Cong., 2nd sess., 1956, 5150.

[7] Michael J. Glennon, *When No Majority Rules* (Washington, DC: Congressional Quarterly, 1992), 10.

[8] Ibid., 6.

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According to John C. Calhoun, the hallmarks of all constitutional governments are "complexity and difficulty of construction."[9] He says such governments are the result "not so much of wisdom and patriotism, as of favorable combinations of circumstances."[10] They grow out of necessity; they are not constructed out of a "philosophically coherent theory." Most of them, he says, have "grown out of the struggles between conflicting interests which, from some fortunate turn, have ended in a compromise by which both parties have been admitted, in some one way or another, to have a separate and distinct voice in the government."[11] In our case, that compromise began with the Connecticut Compromise, often more aptly named as the Great Compromise because it is the gravitational base of all three branches of our government.

Alexis de Tocqueville said the federal principle of our Constitution "rests in truth upon a wholly novel theory, which may be considered as a great discovery in modern political science."[12] Like many great discoveries, it was not the product of a clear, logical, systematic plan. Rather it was the product of necessity, the product of a "fortunate turn"—a pragmatic compromise. With the benefit of hindsight, Tocqueville goes on to explain why he thinks the federal principle is a "great discovery." It unites the strengths of both large and small societies and avoids their weaknesses. Calling it "this great remedy," he says: "Ignorance of this new species of confederation has been the cause that has brought all unions to civil war, to servitude, or to inertness."[13]

In *The Federalist, No. 39*, Madison said our form of government "is, in strictness, neither a national nor a federal Constitution, but a composition of both."[14] Tocqueville said there was not a word to express this novel constitution; Madison suggested "compound." I suggest "alloy"—the fusion of two different kinds of government. We are a nation of states—one society emerging from the fusion of many societies. This fusion created a new kind of star in the political firmament.

This star is the center of our governing solar system. Its gravitational and rotational forces, its processes, are the state equality rule and the federal districting rule—based on numbers of state citizens. These two processes are found in various combinations in all parts of the national government. The state equality rule is the basis of the Senate, the amendment procedure, and the ratification of the Constitution itself. The federal districting rule is found in the House. And the presidency and the judiciary are based on a combination of both.

In this solar system, there has been plenty of room for democratic adaptation and the evolution of a two-party system. Senators once selected by the state legislatures are now selected by the people in each state without damaging

[9] John C. Calhoun, *A Disquisition on Government* (New York: Bobbs-Merrill, 1953), 59.
[10] Ibid.
[11] Ibid.
[12] Alexis de Tocqueville, *Democracy in America* (New York: Random House, 1945), 162.
[13] Ibid., 164.
[14] Rossiter, *Federalist*, 246.

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the federal law of planetary motion and balance. From the outset, the presidential electors could be chosen in many different ways—by the state legislatures, by the state governors, or by the people. By 1832, all the states but one had popular elections for electors. The nominating function of the electoral college has moved to party conventions and popular primaries. Even the office of elector, but not the electoral votes, could be abandoned without destroying the balance of our federal solar system.

Many of the proponents of direct election say we can abandon federalism just in presidential elections. But if the federal principle is not legitimate in presidential elections, it is not legitimate in congressional elections. The objection to the federal principle is an objection that applies to all districted elections. Because our congressional elections are districted, the majority party is often over-represented in the House of Representatives. In House elections over the forty-six-year period between 1932 and 1978, in every election year except one, the Republicans had less representation than their percentage of the national popular vote for House members. And if we abandon the federal principle in presidential elections, surely we should abandon it for the Senate, where a state with half a million people has the same representation as a state with twenty million people!

In fact, logical commentators already make this argument. "Congress is better suited to represent diverse interests, and we might want an electoral system that produces a more representative Congress."[15] This statement is followed by an endnote that is even more explicit. "If so, we should probably abolish the highly unrepresentative Senate and develop a system of proportional representation to select members of Congress."[16]

And if a nonfederal, all-national majority is the only legitimate principle, then why should each state have an equal vote on constitutional amendments? If the argument is that the people should vote in a national plebiscite for the president because he represents them all, why should we not do the same for constitutional amendments that rule and limit us all? And why should we not vote in a national plebiscite for Supreme Court Justices who interpret our Constitution?

The answer to these questions is majority tyranny. The answer is given by James Madison. In *The Federalist, No. 10*, after examining the "mortal diseases under which popular governments have everywhere perished," he concludes that majority faction is the problem.[17] His solution is a social and political system that increases the number, the variety, and the competition of minority factions. The social solution, the large republic, is designed to produce many minority factions and to use them to check one another, making it less likely that a majority faction will form. But he knew that one could still form. Even

[15] Paul D. Schumaker and Burdett A. Loomis, eds., *Choosing A President* (New York: Chatham House, 2002), 184.

[16] Ibid., endnote 27, 206.

[17] Rossiter, *Federalist*, 77.

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today, in a vastly more heterogeneous society, it is possible that a majority faction could form (whites and/or Christians come to mind, but there are other possibilities).

Therefore, as he saw, it was necessary to prevent a majority faction that had formed from having the opportunity to act. This required a political solution, and the Framers supplied one with the separation of powers, checks and balances, and all the national offices based directly or indirectly on the federal principle. In fact, the whole solution is nicely summed up in *The Federalist, No. 51* in the famous "policy of supplying, by opposite and rival interests, the defect of better motives." Madison continues, "the constant aim is to divide and *arrange* the several offices in such a manner that each may be a check on the other."[18] To "arrange" means to put in a suitable order. Whether the Framers anticipated this or not, the federal principle has turned out to be the key to this arrangement policy.

Calhoun said constitutional governments are organic arrangements that begin with suffrage, which is indispensable. To this must be added a provision to prevent abuse of the minority. "There is but one certain mode in which this result can be secured . . . and that is by taking the sense of each interest or portion of the community which may be unequally and injuriously affected, by the action of the government separately, through its own majority."[19] This is the federal principle of our Constitution.

Some suggest that we have outgrown the federal principle in presidential elections. As they see it, that principle may have been necessary during the founding period to resolve the large state–small state conflict and the slavery complication, to address Antifederalist fears about large republics, and to deal with then-pervasive parochial identities. But they say that the system and the country have changed, that we have lost our parochial state-citizen identification and now see ourselves as Americans, that the political parties have taken over the nomination and selection functions of the states, and that the party system and winner-take-all rules have changed the nature of state conflict from large states–small states to competitive–noncompetitive states.

This may all be true, but it does not follow that "in contemporary America, states may be less relevant 'minorities' than are various racial, ethnic, religious, gender, and other identities and interests."[20] First, this argument ignores the fact that the federal principle is the barrier to the formation of a majority faction. Second, the federal principle is more relevant today precisely because these other kinds of minorities are the more dangerous factions—the ones based on principles or passions rather than the relatively docile ones based on the shared interests arising from common state citizenship. Principles, religious and political, cannot be compromised, and neither can passions—especially those based on loyalty. In *The Federalist, No. 10*, Madison said:

[18] Ibid., 322, emphasis added.

[19] Calhoun, *Disquisition*, 21.

[20] Schumaker and Loomis, *Choosing*, 64.

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> A zeal for different opinions concerning religion, concerning government . . . an attachment to different leaders . . . or to persons of other descriptions whose fortunes have been interesting to the human passions, have in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good.[21]

These are the very dangerous factions, but he went on to point out that "the most common and durable source of factions has been the verious [sic] and unequal distribution of property. . . . The regulation of these various and interfering interests forms the principal task of modern legislation."[22] And why? Because economic interests can compromise. Money, land, and even jobs can be divided.

The success of the "policy of opposite and rival interests" requires more than a heterogeneous society; it requires governmental institutions that pick and screen the contestants and structure and shape the contests. The rules must recognize and promote only the least dangerous kinds of factions—the kinds of factions that can and will compromise. The federal principle is the architectural structure because it prevents the dangerous factions from uniting their votes across state lines. It confines them within little republics and forces them to compromise early and often with their fellow state citizens. The compromises will differ from state to state because groups do not scatter themselves randomly across the nation. In one state, a nationally small minority may be quite large, and thus may be either the majority or the swing vote. This gives minorities many opportunities to be part of a statewide majority—to win something. It forces a political structure on the formation of majority coalitions.

The federal principle of basing all representation on common state citizenship uses public not private associations as the framework—public, meaning open to all, not closed to those who do not share the same race, ethnic ancestry, religion, gender, or occupation. These public minorities spring from an obvious common interest—membership in a heterogeneous yet smaller political community whose laws they must all obey, whose taxes they must pay. As state citizens, they share roads, parks, schools, climate, natural resources, and local economies. This is an effective base on which to begin to compromise and to move toward consensus.

The federal principle forces the creation of political majorities, not simply arithmetical majorities. The arithmetical majority, the mere head count, is the tyrannical form of democratic government. Not one but two powers are necessary for free government: first, the power of the ruled to control the rulers, and this is done by suffrage. But suffrage does not suffice because the majority to whom the elected representatives are faithful may be a tyrannical majority. Yes, the representatives will be faithful, but they will be faithful to a bad master.

[21] Rossiter, *Federalist*, 79.
[22] Ibid.

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The second and equally necessary power is a power to compel the majority to be just, to consult, negotiate, and compromise with all affected interests.

The federal principle in elections necessarily shapes and structures our two-party system. Under it, we don't have truly national parties. So party cannot be the vehicle for carrying a majority faction into power. National parties are a myth of the media—they only appear once every four years for the week when each national party convenes to choose its nominee for the presidency. The result is that we have fifty state Democratic parties and fifty state Republican parties. This creates an internal check within the party system, and this is a good thing. As Calhoun pointed out, the rise of the party system produces the conflict of the In party versus the Out party. The party system can overcome the separation of powers because one party can gain control of the whole government. Publius Madison did not anticipate the rise of the party system. Calhoun, with the benefit of hindsight, saw the problem. "The advantages of possessing the control of the powers of government, and thereby of its honors and emoluments, are of themselves, exclusive of all other considerations, ample to divide even such a community into great hostile camps."[23] But here the federal principle provides relief with a decentralized two-party system. Without that relief, the Out party is truly out and will get nothing. The In party could become a majority faction.

The relief is supplied by the fact that federal elections prevent votes from being combined across state lines. The result is that the Democratic party in Massachusetts is quite different from the Democratic party in Georgia, and the Republican party in New Jersey is quite different from the Republican party in Montana. Even though "one party" may control the whole government, that party is not actually one highly disciplined party. The decentralization of both parties means many more groups have a voice in Congress. On occasion, the In party may have to compromise with some members of the Out party. There are those who support highly disciplined parties, but I suspect they believe that their party not only is but will long be the In party. Experience as the Out party might temper their enthusiasm. As Alexander Bickel pointed out, in this country at least, "majorities do not arise spontaneously and are not found; they must be constructed and then maintained."[24] That means we have a choice on how they are to be constructed. We have chosen to organize them along the principle of the concurrent federal majority because that kind of majority is more moderate and inclusive.

The electoral vote system is not perfect. It could be improved by abolishing the office of elector and casting the electoral votes automatically; and the House contingency election could be improved, perhaps by adopting the formula for filling vice presidential vacancies in the Twenty-fifth Amendment. That formula would give the decision to "a majority vote of both Houses of

[23] Calhoun, *Disquisition*, 14–15.

[24] Alexander Bickel, *The New Age of Political Reform* (New York: Harper and Row, 1968), 2.

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Congress." These are reforms that would not deform the Constitution because they would still be federally based decisions. These reforms are not likely to be adopted for two reasons: first, many think there is no pressing necessity for either. The electors have been overwhelmingly faithful, and we have not had a contingency election for more than 175 years. And second, there is no consensus among those who offer more radical reforms.

In a post-election 2000 study, thirty-seven political scientists compared the electoral college to six alternatives: the district plan, the proportional plan, the national bonus plan, a direct popular plurality plan, a direct popular majority plan, and the instant runoff plan.[25] On an approval ballot, the electoral college won 65 percent of the ballots. On a Borda count method, the college won again. On a collective choice method, the college won in six of the nine groups. "Under every system we have examined, the Electoral College is our top collective choice."[26] There is deep division among those who would radically change the system. As a result, "pitting the Electoral College against each alternative to it in head-to-head competition . . . reveals that the Electoral College is our Condorcet winner, defeating each alternative by a margin of at least 2 to 1."[27]

One result of the election of 2000 is that from the reformers' perspective, the sky fell, and very few people seemed to care. For years the reformers predicted that another runner-up president would produce a constitutional crisis. They believed this would energize the country and the movement to abolish the electoral college would pick up speed. Contrary to their predictions and despite the fact that George W. Bush is a runner-up president, the college actually came out a winner because of the spectacle of the Florida recounts and the multiple court decisions. Though dramatic and exciting in a macabre sense, the Florida mess opened many people's eyes to one of the college's many virtues—it isolated the debacle to one state. People began to imagine the chaos of a national recount, a potentially staggering number of lawsuits, and swarms of lawyers. As the nightmare continued, most Americans simply wanted it to end, and were relieved when it did. The public apparently gives a swift and sure decision a higher priority than a plurality president in a very close election. The electoral college beats the alternatives because it successfully addresses all of the goals for presidential selection. None of the alternatives do this.

The Alternatives

Two of the proposed reforms, the district plan and the proportional plan, would not abolish the electoral college and so would not require a constitutional amendment. Any state may adopt either of these plans now. Under the district plan, currently used by Maine and Nebraska, one electoral vote is awarded to

[25] Schumaker and Loomis, *Choosing*, 176–205.
[26] Ibid., 181.
[27] Ibid., 182.

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the candidate who wins the popular vote in each congressional district, and two electoral votes are awarded to the candidate who wins the statewide popular vote. This plan is subject to the odious possibility of gerrymandering because the dominant party in the state legislature draws the district lines. The district plan also makes it easier for minor parties to win electoral votes, and this could result in more frequent contingency elections in the House. *CQ Researcher* applied this plan to the ten elections prior to 2000. They concluded that the district plan would have given the 1960 election to Nixon and would have produced an electoral vote tie between Jimmy Carter and Gerald Ford in the 1976 election, thus sending the decision to the House.[28] George W. Bush would have won under the district plan in 2000.

Under the proportional plan, each candidate would be awarded electoral votes on the basis of the proportion of the state's popular vote that he won. In practice, proportional allocation would either yield fractions of electoral votes, or these fractions would have to be rounded off. Again, this plan makes it much easier for minor parties to win electoral votes. When *CQ Researcher* applied this plan to the results of the presidential elections from 1960 though 1996, they concluded that it would have thrown four of these elections into the House for a decision: 1960, 1968, 1992, and 1996.[29] In 2000, depending upon the method of allocating fractions, either Bush would have won, or the decision would have gone to the House. Most large states will not consider either of these two plans because they recognize that they get more attention because of their huge pools of electoral votes under the unit rule. Unless the large states switch, it is foolish for the small states to do so.

The other four plans would all require the passage of a constitutional amendment. The direct popular vote majority plan with a national runoff if no one gets a majority initially strikes most people as intuitively fair. As they see it, the plan establishes one voter, one equal vote; there would be no possibility of a runner-up president. The problem with this plan is that a majority requirement is too stringent. It would trigger a national runoff whenever no candidate won a popular vote majority, which would be often. (Even under the electoral vote system, we have had seventeen minority presidents.) So forget about a swift and sure decision. The electoral college does have a majority requirement, but because of the unit rule, it is actually a plurality system that almost always converts popular pluralities into electoral vote majorities, even in close elections.

There are two kinds of popular plurality proposals: one with no minimum—whoever wins a plurality wins the office, and one with a minimum—a runoff if the minimum is not met. Critics of the no-minimum plan fear that without some legal threshold, we could elect presidents with a plurality of 30 percent or worse—crippled presidents. On this point they are probably right. While it is

[28] *CQ Researcher* 10 (8 December 2000): 984.
[29] Ibid.

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true that some presidents who were elected without a mandate have been able to build one, no president who has ever done so started from so deep a hole. This plan could shatter our two-party system, and an extremist candidate with a loyal following could win—to the deep dismay of a large majority of the people. Such a president would not have sufficent (if any) support in Congress.

The popular plurality system with a 40 percent minimum has been the leading contender against the electoral vote system. It has been proposed in Congress several times since 1960. After extensive hearings, in 1979, there was a floor vote in the Senate on such an amendment. A bipartisan group of Senators defeated the proposed amendment. The vote was 51 in favor, making it 15 votes short of the necessary two-thirds majority. It was a decisive defeat. Since then, no proposal has reached the floor of either chamber.

The 40 percent rule was chosen because only Abraham Lincoln ever achieved less (39.79 percent). Supporters think this will suffice to prevent runoffs because we have had many presidents who polled between 40 and 50 percent of the popular vote, and they have been able to govern. Those opposed fear that this plan would turn the general election into a primary, and runoffs would become the rule. Very probably, they are right. Forty percent has been sufficient under the unit rule, which magnifies the winner's electoral vote percentage because he has won states. In 1912, in a three-way race against Theodore Roosevelt and William H. Taft, Woodrow Wilson, who won only 41.8 percent of the popular vote, won 81.9 percent of the electoral vote. However, when you change the rules, you change the game. The unit rule and its magnifier effect would disappear. As I pointed out in my Senate testimony in 1992, "There is nothing magical about the 40% figure. It is the fact of a popular runoff process not a numerical percentage that changes attitudes about the general election."[30]

The very existence of a popular vote runoff creates a "win something" psychology in minor parties and extremist candidates and a "second chance" psychology in voters. The runoff provision is an open invitation to a proliferation of parties. The more parties in contention, the more likely a runoff. In a runoff, a minor party can win something important (a Supreme Court nomination; a cabinet post; an agreement to support a position on school prayer, gun regulation, or abortion) in exchange for support in the runoff election. Extremist parties will have more leverage. This changed minor party psychology is buttressed by changed voter psychology. If you have a good chance of casting a second vote for the "lesser of two evils," why not vote your heart and "send them a message" the first time? Why compromise now? If that were not enough, the premium on fraud is increased because fraud can produce a "second chance," a runoff.

Several of the alternatives have runoff provisions. But runoffs are a bad idea. The "no minimum" people are right about that. Runoffs delay the deci-

[30] Judith A. Best, Testimony, U.S. Senate, Committee on the Judiciary, Subcommittee on the Constitution, *Hearings: The Electoral College and Direct Election of the President*, 102nd Cong., 2nd sess. (Washington, DC: U.S. Government Printing Office, 1992), 94.

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sion, weaken the two-party system, and are expensive. The electorate wearies of elections. As it is now, most people do not pay much attention to presidential elections until October. If runoffs become the rule, many may not pay sufficient attention until the runoff.

The runoff problem has led some to support the newest reform fad, instant runoff voting, sometimes called the Irish Ballot. Instead of making a choice among the candidates, the voters would rank order their preferences (first choice, second choice, third choice, etc.) so that their ballots could be transferred from one candidate to another. If no candidate wins a majority on the basis of the first-place preferences, the last-place candidate is eliminated and the second-place preferences of those who selected this candidate are added to those of the remaining candidates. If no candidate wins a majority at this stage, the last-place candidate is eliminated and the preferences of those who selected this candidate are added to the remaining candidates. This continues until someone wins a majority.

Critics point out that preferential voting is undemocratic because it is a "some men two votes system." And the men who have "two votes" are those who voted for the fringe candidates. This system would surely lead to a plethora of parties, many of them extremist, and it would empower their supporters. There are other problems. What if many people refused to mark a second preference, or suppose they stubbornly refused to make a different second choice and named their first choice as their second as well? If we adopted this plan, would we require people to make multiple choices? Because this plan will encourage the entry of more minor parties and independent candidates, the leaders in the first round may win very low percentages of the popular vote. We could need many rounds of transfers to achieve a candidate with a majority. How many choices will we require voters to mark—three, five, ten? Given a secret ballot, the only way to do this would be to reject ballots that are not in compliance. Even if most people do comply, there are all kinds of ranking games that voters and candidates might be tempted to play—most of which we cannot begin to anticipate. And given the difficulties many people had with a much simpler butterfly ballot in Florida, it seems likely that this system will produce many spoiled ballots. This plan is so cumbersome and confusing that people will wonder if the winner is actually the choice of most people.

Because the nonfederal popular vote plans sacrifice many of the six goals of presidential elections, in 1978, the Twentieth Century Fund proposed a hybrid system, the National Bonus Plan. Under this plan, the electoral vote system would be retained, though the office of elector would be abolished and the unit rule would be mandated. There would be a bonus of 102 electoral votes awarded to the winner of the national popular plurality. An absolute majority (321) of the new total number of electoral votes (640) would be required for victory. If no candidate won an absolute majority, there would be a runoff, under the same rules, to determine the winner.

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One of the goals of this plan is to preserve the federal system in presidential elections. Ironically, it has no chance to be adopted because of the federal principle in the amendment process. There are enough small states to defeat it, and defeat it they will because it can marginalize them. Because the candidate who wins a plurality of the national popular vote will get 102 electoral votes, he only needs 219 of the state electoral votes. The eight most populous states have more than that. A candidate could run a campaign to maximize his support in those eight states and win the office. Under the current electoral vote system, the states that get the most attention are the competitive states, large or small. Even small states can be important. In 2000, Gore would have been victorious even if he had lost Florida, if he had won West Virginia or Tennessee or Arkansas or New Hampshire. In 2000, Californians were complaining that they were being neglected by both parties because they were not a competitive state. You change the rules, you change the game. If the bonus plan had been in effect in 2000, the bonus votes would have outweighed the combined electoral votes in twenty-two states and the District of Columbia. In close elections, this plan could also generate national recounts and accusations of fraud and end with multiple court challenges in all the states to determine who actually won the national popular vote contest. One hundred two electoral votes are a prize worth the effort! Think of how long it took in just one state, Florida, and forget the swift, sure decision. It would be a spectacle with all the dignity of jello wrestling.

While some of the reformers in the direct popular vote camp agree with some of the six goals for presidential elections, they do not agree with all of them. They want "one man, one equally weighted vote" and think this single goal trumps all the others. They do not value the federal principle or its role in building well-distributed majorities that can govern. They want to break down the nation into isolated individual voters, not to bring people together to form a critical mass of support for a president. They are interested solely in numbers of votes; they do not care about the distribution of the votes. Their commitment to this one goal in presidential elections is so great, they cannot see that, in effect, they are proposing a regime change. If their amendment is adopted, their monistic goal must be, and eventually will be applied to all parts of the national government. They offer a simple solution to the complex problem of selecting presidents. As a result, they offer no solution to the greater and more complex problems of how to prevent majority tyranny and how to build the kinds of majorities that will gain minority consent.

Those who, despite its flaws, support the electoral vote system, think presidential selection is a complex problem, with multiple integrated and interdependent goals, goals that contribute to the balance of an entire solar system of governmental power. So in the end, it all comes down to the federal principle. It will either continue to be one of the two structural principles of our Constitution, or it will disappear entirely. If it does, the separation of powers effectively will fall with it. We cannot base one part of the separated and balanced powers on a national plebiscite and not the others. We cannot base the Senate and the

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House of Representatives on the principle of the concurrent majority and exempt the presidency. To do this could make the president a Caesar. Then we would indeed have an imperial presidency. He would be the only national officer who could claim to speak clearly and directly for the "people." If the federal principle is illegitimate in presidential elections, it is illegitimate in all our national elections and in all our national decisions. Simple solutions rarely, if ever, solve complex political problems. This nation has grown strong, stable, and free under the federal principle. We are a nation of states, one supreme united society created out of many small societies. *E Pluribus Unum.*

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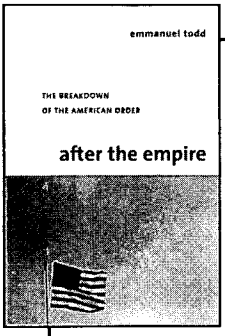

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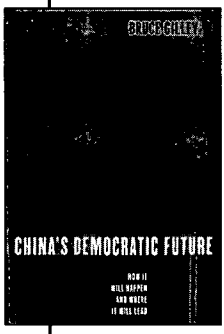

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Palestinian Suicide Bombing: Public Support, Market Share, and Outbidding

MIA M. BLOOM

Why have suicide bombings in the Middle East become so popular? In this article, I investigate how and why Palestinian public opinion increasingly supports suicide bombings even though support for such operations and for Hamas has fluctuated in the past. Since November 2000, Palestinian public opinion has alarmingly shifted its support toward radical Islamic organizations because of a number of factors endogenous to Palestinian society.[1] Under conditions of mounting public support, the bombings have become a method of recruitment for militant Islamic organizations within the Palestinian community. They serve at one and the same time to attack the hated enemy (Israel) and to give legitimacy to outlier militant groups who compete with the Palestinian Authority for leadership of the community.

Multiple organizations are engaged in this competition and use violence to increase their prestige. With every major attack since November 2000, support for suicide bombings has increased and support for the Palestinian Authority has decreased. In addition to building support for martyrdom, groups that use

[1] See James Fallows, "Who Shot Mohammed al Durra?" *Atlantic Monthly* (June 2003): 49–56. The endogenous factors include the widely publicized and televised killing of Mohammed al-Durra on 30 September 2000 and seventy other Palestinians killed in the first two months alone, the failing economic situation, Palestinian disillusion with the deadlocked peace process, and Ariel Sharon's visit to the Temple Mount, which corroborated Hamas rhetoric that Israel would never fulfill its Oslo obligations. As much as Durra is a symbol, there are questions as to who is really responsible for his death.

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the tactic become more popular. The support for militant Islamic movements appears to capture previously nonaligned groups among the Palestinians, demonstrating that martyrdom operations boost the organizational profile of the groups using them.

Palestinian suicide bombings are violent, politically motivated attacks carried out in a deliberate state of awareness by persons who blow themselves up together with a chosen target.[2] Support for suicide operations works against the stated goals of a better future for Palestinian civilians. Public opinion polls indicate that Palestinians are worse off now than they were before the al-Aqsa *intifada* according to every indicator (economic, social, health, etc.). Yet, the majority of Palestinians support the continuation of the al-Aqsa *intifada* and martyrdom operations regardless of Israeli retaliatory policies.[3] The targets and modus operandi of suicide bombings vary, ranging from government officials to military or economic targets, and from scores of attacks to solitary or sporadic ones.[4] However, there is no single theory about what motivates suicide bombers and no firm opinion among Palestinians as to their usefulness.

Conventional explanations of Palestinian suicide bombings regard them as a way for radical Islamic organizations to slow or stem the improvement of relations between Israel and the Palestinian Authority. In this capacity, the bombings play a strategic "spoiler role" in regard to the peace process. Hamas has urged more violence as relations between Israel and the Palestinian Authority have improved. According to Palestinian Authority documents released in January 2004, "suicide bombings are a key element in the arena of the struggle between the Israelis and Palestinians, and an analysis of the circumstances of the timing and execution of the vast majority of the bombings, particularly the major ones conducted by the Hamas and Islamic Jihad, makes clear the timing was much more a purely political matter than a practical military one."[5] According to the report, Hamas and Islamic Jihad had agents who provided information on political developments, including inside information about negotiations with Israel and the United States, thus enabling Hamas and Islamic Jihad to respond accordingly.

An alternative explanation follows from the logic of Barry Weingast and Rui de Figueiredo, who have argued that violence is often retaliatory.[6] This school of thought traces Palestinian suicide bombings to Israeli provocations,

[2] Yoram Schweitzer, "Suicide Bombings: The Ultimate Weapon?" 7 August 2001, accessed on the ICT website at http://www.ict.org.il, 20 May 2002.

[3] See JMCC Poll #47, December 2002, as well as interviews of Khalil Shikaki with the author, 17 October 2002.

[4] Yoram Schweitzer, www.ict.org.il.

[5] Arnon Regular, "PA Document: Hamas and Islamic Jihad Timed Bombings to Derail Peace Processes," 8 January 2004, accessed at http://www.Haaretz.com, 9 January 2004.

[6] Rui de Figueiredo and Barry Weingast, "Vicious Cycles: Endogenous Political Extremism and Political Violence" (paper presented at the annual meeting of the American Political Science Association, Boston, September 1998).

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beginning with the Hebron Massacre by Baruch Goldstein. As Mazin Hammad has commented: "The al-Ibrahimi Mosque massacre opened the doors of revenge in Palestine like never before."[7] Other provocations include the opening of the tunnel under the al-Aqsa Mosque and the Israeli policy of "targeted assassinations" of Palestinian militant leaders, for example, Hamas's bomb maker, Yahiyeh Ayyash,[8] Izz Eddin al-Qassam Brigade leader Salah Shehada and his family and, most recently, Sheikh Ahmed Yassin on 22 March 2004.[9]

The news media implies causality and linkage between the two explanations: "Signs of progress recorded by Middle East peace-brokers were obliterated in an orgy of terror as six Israelis were killed in a Palestinian suicide attack in January after Israelis killed Raed Karmi, the local militia leader in Tulkarm of [Yasser] Arafat's Fatah organization."[10]

Andrew Kydd and Barbara F. Walter have argued that violence plays a spoiler role to the peace process and is to be expected when negotiated settlements become imminent. "The purpose is to exacerbate doubts on the target side that the moderate opposition groups can be trusted to implement the peace deal and will not renege on it later on."[11] For Walter and Kydd, suicide bombing is a complex game dependent upon uncertainty between moderates and the target state and upon whether moderates are weak or strong vis à vis their opposition. They posit that weak moderates are less capable of stopping terrorism from within their own ranks, causing uncertainty in the other side that results in the cancellation of peace negations and a shift in Israeli voting in favor of antipeace candidates. Their model appears to explicate the bombings that surrounded the 1996 Israeli elections, although it fails to explain the whole story.

The attacks carried out in February and March 1996 were among several factors that influenced the outcome of the Israeli prime ministerial election of May 1996 that brought right-wing Benjamin Netanyahu into power and delayed the implementation of the Oslo and Wye Agreements. Netanyahu's victory was actually unexpected and occurred in the wee hours of election night by a slim margin of less than one half of one percent. This outcome was the product of several factors, including the boycott by Israeli Arabs of the election. Israeli Arabs, who comprise 20 percent of the electorate, boycotted the election after 102 men, women, and children were accidentally killed in an Israeli artillery

[7] "Hamas Operations Against Israel Said to Continue," *Al Dustur* (in Arabic), 14 April 1994.

[8] The Council on Foreign Relations says that the five bus bombings in 1996 followed the killing of Hamas's chief bomb maker, Yahya Ayyash, "Terrorism: Questions and Answers, Hamas, Islamic Jihad," accessed at http://www.terrorismanswers.com, 10 May 2002.

[9] Ehud Sprinzak, interview with the author, 1 April 2002. This is borne out by Palestinian public opinion surveys that cite the targeted assassinations as the factor most harmful to the Palestinians, see JMCC vol. 2 no. 6 October 2001 poll: 5, accessed at http://www.jmcc.org/publicpoll/pop/01/oct/pop6.htm, 10 May 2002.

[10] Tony Karan, "Chronicle of a Massacre Foretold," *Time*, 18 January 2002; Robert Fisk, "Suicide Bombing on Passover Feast Wrecks US Peace Plan," *The Independent*, 28 March 2002.

[11] Andrew Kydd and Barbara F. Walter, "Sabotaging the Peace: The Politics of Extremist Violence," *International Organizations* 56 (Spring 2002): 263–296.

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attack on the UN compound in Kana, Southern Lebanon on 18 April 1996—six weeks before the election. The Kydd and Walter model fails to explain why bombings in 1995 did not have the same effect on the peace process when Yitzhak Rabin was still alive,[12] nor can it rationalize how a left-wing government under Ehud Barak was elected in 1999 despite their indication of two episodes prior to the election. However, according to my data, there were no suicide attacks during this period and it is documented that "there was relatively little Palestinian terror on Netanyahu's three-year watch. Due to Arafat's combination of threats, policing and political cajolery, Arafat got Hamas to cut down its violence."[13]

Their explanation partially explains what motivates the organizations but does not account for why public opinion supports or rejects the tactic and, finally, they conflate the results of suicide bombing campaigns with their underlying motivation. There have been periods of time when Hamas has willingly honored cease fires (*hudna*) to allow Arafat to pursue peace negotiations with the Israelis. For example, Arafat convinced Hamas to suspend military actions after 11 September 2001 on the condition that Israeli targeted assassinations stop. The Israelis continued their policy, and Hamas proceeded with their attacks.[14] This was repeated in June 2003, when Hamas called a *hudna*, only to resume operations after a failed attack on Dr. Abdel Aziz Rantisi.

Hamas may use suicide terror to deter policymakers from reaching agreements but only as long as Israeli policymakers transparently equate violence with non-negotiation, providing Hamas with its own "road map" of how to spoil a peace process that would, by definition, exclude them. Kydd and Walter correctly identify extremist violence as being strategic; the target of the violence is not only the moderates negotiating the peace treaties. There are actually two audiences for the violence, one domestic (within the Palestinian community) and one external (the "Zionist Entity").[15]

These existing interpretations (spoiler or retaliatory) ignore the internal state-building process and discount the competition for leadership under way within the Palestinian community that accounts for both the occurrence of bombings as well as the absence of attacks in the period from November 1998 to November 2000. Furthermore, the significant increase in attacks in March 2002 took place against a political backdrop with few substantive peace negoti-

[12] "Peace, Terror and Dissent in Israel: Hamas Goal of Blocking Negotiations," *New York Times*, 23 August 1995.

[13] Hillel Halkin, "Bye, Bye Bibi," *The New Republic*, 7 June 1999.

[14] Interview with Ziad Abu Amr cited in Joyce M. Davis, *Martyrs: Innocence, Vengeance, and Despair in the Middle East* (New York: Palgrave, 2003), 171.

[15] A senior Israeli security official said the attacks [in May 2003] were aimed both at Israel and at Mahmoud Abbas (Abu Mazen), the first Palestinian prime minister, who has promised to disarm militant groups. "Everyone in the terror chain is very worried about this development," he said of the appointment of Mr. Abbas. "They are determined to escalate and make every effort to carry out attacks in this period." James Bennet, "3 Israelis Killed and 50 Wounded in Blast at Mall," *New York Times*, 20 May 2003.

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ations between Israel and the Palestinian Authority—limiting the explanatory power of the spoiler rationale to explain this phenomenon as a whole. James Bennet commented, "Having seen peace initiatives melt before previous waves of violence, Israelis, like Palestinians, were already deeply skeptical of the new plan [Bush's Road Map]. Many on both sides do not seem to be paying much attention to the renewed diplomacy."[16] So it is unclear how effective the attacks are at spoiling a peace no one believes in. Finally, these existing interpretations cannot account for the variance in public support for such operations over time.

Two Phases of Support for Suicide Terror

In the first period (1994–1996), support for suicide operations never exceeded a third of Palestinians polled, whereas after November 2000, support for operations jumped to two-thirds or more. The bombings are not just the result of impending implementation of peace treaties or part of tit-for-tat violence. Suicide bombings are more than just a reaction to external stimuli; we have to acknowledge the motivations for violence within Palestinian society. One should nuance support for the bombings and explain each phase separately. To do this, we need to better comprehend the internal dynamics of the Palestinian polity and the ways in which radical organizations have effectively penetrated civil society.[17]

Palestinians' disillusionment with Arafat, his Palestinian Authority, and the deadlocked peace process provided radical groups with an opportunity to increase their share of the political market by engaging in violence.[18] Finally, Israeli heavy-handed responses to the violence (incursions into Area A, targeted assassinations, use of helicopter gunships, and civilian casualties) make Hamas's rhetoric appear valid and prescient.[19]

The frustrations associated with the Oslo Process and with Camp David II, and the provocative visit in September 2000 of Ariel Sharon to the Haram al-Sharif and the al-Aqsa Mosque exacerbated negative relations between Palestinians and Israelis. Israeli sharpshooters inflicted heavy casualties on Palestinian demonstrators, who were initially comprised of unarmed youths engaged in symbolic stone throwing. Israel relied on excessive force, generating a cycle

[16] There was a series of failed or aborted peace missions. According to public opinion polls, fewer than 18 percent of those Palestinians polled had any confidence in the success of the Zinni or Powell Missions. After the election of Mahmoud Abbas as Prime Minister in the spring of 2003, Hamas justified its attacks to ensure that the "road map for peace" would fail. Bennet, ibid.

[17] Mouin Rabbani, "Suicide Attacks in the Middle East are Fueled by Alienation and Futility," Palestinian Media Watch, 4 April 2001, *Middle East News Online*, accessed at http://www.merip.org/mero/mero10170.html, 20 May 2002.

[18] Imad A. Faluji, *Darb al Ashwak: Hamas, al-Intifada, wa al Sultah* (The Path of Suffering: Hamas, the Intifada, and the Authority) (Arabic) (Amman, Jordan: Dar al Shuruq, 2002).

[19] Interviews of Palestinians with the author, 12 April 2003, names withheld; see also Emile Sahliyeh and Zixian Deng, "The Determinants of Palestinians' Attitudes toward Peace with Israel," *International Studies Quarterly* 47 (December 2003): 706.

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of violence that has been escalated by Israel at each stage, inflicting disproportionate casualties on the Palestinian side.[20]

In the first period, suicide bombings were intermittent and, according to Sheikh Yassin and Abdel Aziz Rantisi, *were* intended to both undermine the legitimacy of the Palestinian Authority and negatively affect the peace process.[21] The timing of the attacks was correlated to respond to Israeli actions, which provided defensive justifications for Hamas violence—in accordance with Islamic law. However, responsibility for the attacks during the first period was often not claimed by any group at the time. Later on, groups vied with one another to claim each incident.

Popular support for the bombings during this period remained low, and Hamas was unable to mobilize Palestinians by using violence. In 1996, the attacks were intended to disrupt the Israeli elections, but the missile attack on Kana and the subsequent boycott of the elections by Israeli Arabs also had a significant impact on the election results.

In the second period (after November 2000) and increasingly since, support for suicide operations increased exponentially and the waves of bombings demonstrated a competition between groups vying for power against a backdrop in which violence resonates with the rank and file. Furthermore, we can observe increasing popular support for groups after they perpetrate martyrdom attacks.

The bombings have effectively undermined Arafat's monopoly of the legitimate use of force in an emerging Palestinian state entity.[22] According to one Palestinian cabinet member, "When there is an ongoing peace process, the Palestinian Authority is empowered enough to exercise its control over all of the citizens . . . but after ten years of negotiations, Jewish Settlements have doubled since the signing of the Oslo agreement . . . Hamas and the Islamic Jihad are political organizations that now have substantial standing in the [Arab] street."[23]

In the period immediately after Oslo, Arafat suppressed Hamas and Islamic Jihad, arrested over 2,000 operatives, and killed twenty of their leaders. The period between the signing of the 28 September 1995 Interim Agreement

[20] Richard Falk, interview with the author, 1 February 2002.

[21] Ma'mun Basisu, Niqash Sarih li Muntaqidi al-amaliyyat al-istishadiyya (frank discussions with the critics of martyrdom operations), Arabic *al-Liwa'*, 6 July 2002; see also a Hamas statement that claimed that one purpose of the Netanya Park Hotel Passover Seder attack (27 March 2002) was to derail diplomatic initiatives at an Arab League summit in Beirut. "The summit resolutions are below the aspirations and the sacrifices of the Palestinian people," said 'Usama Hamdan, a Hamas spokesman in Beirut. The Palestinian Authority agreed that "this operation against Israeli civilians is in essence an attack against the Arab summit and against [U.S. Special Representative Anthony] Zinni's mission." WAFA (official Palestinian Authority news agency), 27 March 2002. Translated from Arabic by Human Rights Watch. HRW Report, *Erased in a Moment: Suicide Bombing Attacks Against Israeli Civilians* (New York: October 2002), 33.

[22] Andrew Bilski and Eric Silver, "Dashed Hopes: Rabin and Arafat have Become Prisoners of the Peace Process," *Maclean's* 108 (1995): 30–31.

[23] Ziad Abu Amr, Palestinian Cabinet Member (Independent) and Minister of Culture, interview cited by Joyce Davis in *Martyrs*, 168–169.

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("Oslo II") until the suicide bombings of February and March of 1996 represented a high point for the Palestinian Authority. The January 1996 elections for an eighty-eight-member Palestinian Council and the election of Yasser Arafat as President of the Palestinian Executive Authority endowed the Palestinian Authority with sorely needed political legitimacy. The smooth transition to Shimon Peres after Yitzhak Rabin's assassination, and the Israeli public reaction, increased Palestinian hopes for genuine peace. The Palestinian opposition's decision to boycott Palestinian Authority institutions and the elections led to its further marginalization and to increased dissent within its already fragmented ranks.

During the Oslo process, opinion polls consistently showed that the majority of Palestinians opposed "martyrdom operations." In November 1998, most Palestinians (75 percent) ceased to support suicide operations altogether. In 1999, when over 70 percent of Palestinians had faith in the peace process, support for suicide bombings fell to 20 percent and support for Hamas was at its lowest point ever (below 12 percent).[24] When it appeared that the peace process would yield positive results, the bombings did not resonate for the majority of Palestinians, who preferred statehood and peace to violence and continued occupation (see Figure 1).[25]

In the aftermath of Wye, Arafat had the mandate to crack down on militants and reign supreme on the Palestinian scene. President Bill Clinton's visit to Gaza in December 1998 helped give Arafat the legitimacy to implement the Wye Accord, and the Palestine National Council voted to amend the Palestinian Liberation Organization (PLO) charter to rescind the call for the destruction of the state of Israel. In January, Israeli Knesset members from all sides of the political spectrum rebuked Netanyahu and called for new elections. On 17 May 1999, Ehud Barak won a landslide victory. The majority of Palestinians were cautiously optimistic that they would get statehood.[26]

[24] When Palestinians were asked in 1999 about their level of optimism or pessimism about the future, 70.7 percent of the respondents replied positively. There were no major differences in the level of optimism about the future between those surveyed in the West Bank and those in the Gaza Strip. By January 2001, when respondents were asked about their level of optimism or pessimism about the future, 48.8 percent stated that they were optimistic and 50.2 percent were pessimistic about their futures, a significant change from 1999. JMCC Poll vol. 2 no. 2 (January 2001). By 2003, over 80 percent were now pessimistic (see Figures 1, 6, and 7).

[25] Support for suicide operations varied by respondent characteristics. Those living in refugee camps were more supportive of military operations against Israeli targets than were respondents residing in cities and villages (79 percent, 75 percent, and 69 percent, respectively). Refugees and Gaza Strip residents were also more supportive of military operations than were nonrefugees or East Jerusalem residents, and there was 68 percent support among Palestinians with less than a high school education versus 76 percent support among those with a high school education or higher; and 67 percent of Palestinians forty years or older versus 76 percent of respondents under forty supported suicide bombings. There has been a dramatic increase in the level of public support for military and suicide operations against Israeli targets. The level of support for suicide operations against Israeli targets is more than double the level of support during the past five years (26.1 percent in March 1999, 28.2 percent in August 1997, 23.6 percent in May 1997, 32.7 percent in April 1997, and 32.8 percent in June 1995).

[26] Yossi Beilin, chief Oslo negotiator, interview with the author, 16 April 2003.

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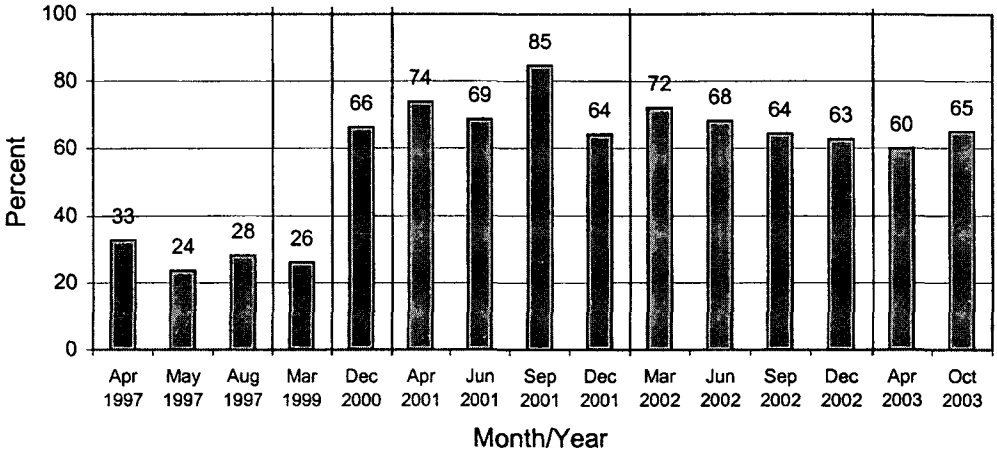
FIGURE 1
Support for Suicide Operations Among Palestinians



Sources: JMCC polls April 1997–October 2003.
Note: Months not present on the graph indicate that this question was not asked by the JMCC or that polls were not conducted because of the Israeli policy of closures, which hindered the JMCC's ability to conduct the research on a quarterly basis.

By the summer of 1999, Arafat had neutralized the Izz Eddin al-Qassam Brigade (the military wing of Hamas) in coordination with Israeli intelligence forces and had cut off millions of dollars that Hamas received from outside aid organizations. Hamas's popularity fell to 10 percent, and the organization began to fracture and disintegrate from within. Because of the funding shortage, Hamas's extensive network of social services, which bolstered its popularity among impoverished Palestinians, declined overall.[27] In 1999, major schisms in Hamas emerged when its spiritual leader, Sheikh Ahmad Yassin, recognized Arafat's leadership and openly participated in meetings of the Palestinian National Council, proffering legitimacy to the Palestinian Authority. Yassin even publicly endorsed Arafat's decision NOT to unilaterally declare independence in May/June of 1999, for which he was severely criticized by hardliners within his own organization.[28]

As Ehud Barak increasingly ignored the Palestinian issue in favor of a "Damascus-first strategy," Arafat's rule was increasingly questioned because of the peace deadlock and the Palestinian Authority's corruption.[29] Although Arafat was the unchallenged Palestinian leader in 1994–1996,[30] this was not the case

[27] "Hamas Divides Against Itself," *Middle East Intelligence Bulletin*, June 1999.

[28] Yossi Beilin, interview with the author, ibid.

[29] Fmr. Ambassador Itamar Rabinovitch, senior Israeli negotiator, interview with the author, 19 April 2001.

[30] Center for Palestinian Research Polls, CPRS Polls Survey Research Unit, accessed at http://www.pcpsr.org/survey/cprspolls.html, 20 May 2002.

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during the second phase (1996–2000), when he appeared weak and incapable of delivering Palestinian support for his policies—partially explaining the much-touted refusal of Ehud Barak's peace deal in 2000.

In the second phase, Arafat's popularity occasionally plummeted to below 27 percent. The period of peace deadlock was closely correlated with an increase in Palestinian unemployment, decreasing per capita gross national product, and economic stagnation, which contributed to a poisoned atmosphere in which suicide bombings became more popular.[31]

Finally, the poor performance of the Palestinian Authority, the rife corruption of its leadership, and their inability to improve the daily lives of most Palestinians meant that by November 2000, Islamic Jihad and Hamas re-emerged to initiate a new cycle of violence. In the absence of funding to finance their benevolent activities, Hamas shifted the major focus of their efforts to martyrdom operations to raise their profile and win external donor support.

Public opinion polls showed a steady increase in support for martyrdom operations as Palestinian hopes for a peaceful future plummeted. After a series of suicide bombings in 2000, popular support for Hamas rose to over 70 percent, according to public opinion polls, and continued to rise over the next two and a half years. "Drawing sustenance from the demise of peace and Fatah's disarray and general despair, the group's popularity soared, reaching parity with Fatah's."[32] *The Economist*'s prediction of Hamas's parity with Fatah was realized by April 2003, when polls placed their popularity at approximately 22 percent each (see Figure 2).[33]

Violence now resonates with the larger population because of some of the Sharon government's counterterror tactics. Fewer than 17 percent of Palestinians are optimistic that the violence will end and peaceful negotiations will resume. Since the outbreak of the al-Aqsa *intifada* in September 2000, Israel has stepped up attacks on civilians, militants, the government, and civil infrastructure.

Under Sharon's government, Israeli soldiers have bombed Palestinian cities, sent tanks into Palestinian villages, assassinated Palestinian leaders, killed Palestinian youths, demolished Palestinian homes, blockaded Palestinian towns, mined Palestinian fields, and made Arafat a virtual hostage in the West Bank. But the suicide bombers keep coming.[34]

Most Palestinians view violence as their only option for achieving their goal of independence. Munir al Makdah, who trains suicide bombers, is quoted as saying, "Jihad and the resistance begin with the word, then with the sword, then with the stone, then with the gun, then with planting bombs, and then trans-

[31] Assaf Moghadam, "Palestinian Suicide Bombing in the Second Intifada: Motivations and Organizational Aspects," *Studies in Conflict and Terrorism* 26 (2003): 75.

[32] "Hamas Has the People's Heart," *The Economist*, 29 November 2001.

[33] Shikaki, interview with the author, 17 October 2002; the April 2003 JMCC Poll #48, accessed at http://www.jmcc.org/publicpoll/results/2003/no48.htm, 30 April 2003.

[34] Davis, *Martyrs*, 167.

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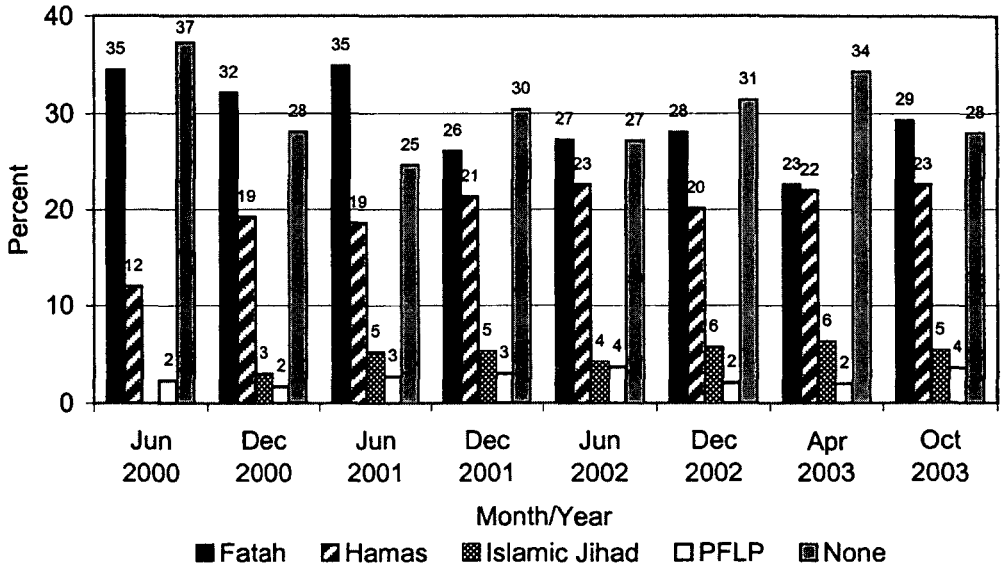
FIGURE 2
Trust in Palestinian Factions Over Time



Source: JMCC polls June 2000–October 2003.
Note: Support for Fatah did not change much at the outset of the al-Aqsa *intifada*. However, the level of support for Islamic factions (including Hamas, Islamic Jihad, Hezbollah, and other Islamic factions) increased from 12.0 percent in June 2000 to 23.9 percent in December 2000. Beginning in December 2000, the Islamic Jihad and Hamas organizations were ranked separately.

forming bodies into human bombs."[35] Thus, suicide bombing develops as a strategy over time after other tactics fail to yield results.

After the outbreak of the *intifada*, support for the bombings and radical Islamic groups increased after every suicide bombing, and Arafat's support declined. According to Khalil Shikaki, the director of the Palestinian Center for Policy and Survey Research in Ramallah, young zealots hijacked the *intifada* and exploited Palestinian instability "to weaken the Palestinian old guard and eventually displace it."[36] Israeli intelligence officials predicted that Palestinian Authority rule in the Gaza Strip would "disintegrate and that Arafat will [eventually] be replaced by Hamas and the Islamic Jihad."[37]

By claiming responsibility for the attacks, Hamas made the PLO look moderate by comparison. The *New York Times* argued that Arafat benefited personally from extremist violence and that the suicide bombings gave him lever-

[35] Ibid., 150.
[36] Khalil Shikaki, "Palestinians Divided," *Foreign Affairs* (January–February 2002): 89.
[37] Arieh O'Sullivan, "IDF warns PA losing control of Gaza Strip," *The Jerusalem Post*, 19 November 2001, accessed at http://www.jpost.com/Editions/2001/11/19/News/News.38353.html, 20 May 2002.

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age in final status negotiations with Israeli Prime Minister Ariel Sharon.[38] Far from benefiting, Arafat was weakened by suicide bombing. Ziad Abu Amr, the chairman of the political committee of the Palestinian Legislative Council and Cabinet Minister, confirmed this: "Arafat should be empowered politically, not undermined. Only then can he move against the militants. Arafat was the only one who signed an agreement with Israel, and he is the only one who can. But Arafat is losing his popularity to suicide attacks. If there is nothing for him to brag about . . . nothing that he has accomplished . . . he has no standing. It all boils down to politics, power, and interests."[39]

Although directed at Israeli civilian and military targets, suicide bombings undermined Arafat's legitimacy. The attacks increased when Arafat was weakened by his inability to fulfill promises made to the Palestinian people and incapable of maintaining the monopoly of legitimate force.[40] In the absence of monopoly over force, groups competed and outbid each other with more spectacular bombing operations and competition over claiming responsibility. At the same time, the operations whipped up nationalist fervor and swelled the ranks of Islamic Jihad and Hamas, who used the bombings, in conjunction with the provision of social services, to win the hearts and minds of Palestinians.[41]

Hamas spokespersons acknowledge that the group sees its sizeable social programs as a means of building and maintaining popular support for its political goals and programs, including its militant and armed activities. "The political level is the face of Hamas, but without the other divisions Hamas would not be as strong as it is now," according to Ismail Abu Shanab. ". . . It needs the three parts to survive. If nobody supports these needy families, maybe nobody would think of martyrdom and the resistance of occupation."[42] Another Hamas leader, Ibrahim al-Yazuri, characterized Hamas's objective as "the liberation of all Palestine from the tyrannical Israeli occupation . . . which is the main part of its concern. Social work is carried out in support of this aim."[43]

During periods of deadlock, the Israeli policy of West Bank and Gaza closures causes severe economic stagnation. Terje Roed-Larsen, a United Nations representative, estimated that there is a 75 percent poverty rate in Gaza and a 53 percent unemployment rate in the Palestinian territories—exacerbated by

[38] Serge Schnemann, "Israelis and Palestinians Wait for Explosions, and Despair," *New York Times*, 8 March 2002.

[39] Abu Amr interview cited in Joyce Davis, *Martyrs*, 168.

[40] John Kifner, "As Arafat Critics Close in, Deputies Vie in the Wings," *New York Times*, 21 May 2002.

[41] Shaul Mishal and Avram Sela, *The Palestinian Hamas: Vision, Violence, and Coexistence* (New York: Columbia University Press, 2000). "One of 60 Operations That Hamas Has Planned To Carry Out against Israel," *al-Sharq al-Awsat* (London), 2 August 2002.

[42] Megan Goldin, "Hamas Feeds Struggle against Israel with Charity," Reuters, 4 January 2001.

[43] The interview in Hamas's *Filastin al-Muslimah* (no date cited) is translated and excerpted in "Summary of Information Provided by the FBI to the Department of Treasury in Support of the Designation of the Holy Land Foundation for Relief and Development," no date, provided to Human Rights Watch by the U.S. Department of the Treasury, August 2002.

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restrictions on movement imposed by the Israeli security regime.[44] Thus, the bombings resonate against a dual backdrop of economic hardship and the disappearance of any possible peace dividend. Palestinians are convinced that military operations are the only way to wear down the Israeli resolve and weaken their desire to hold on to the Territories.[45] In sharp contrast to this, during periods of "peace progress," few Palestinians responded positively to the bombings in public opinion polls.[46] It is precisely during periods of deadlock that suicide bombings proliferate to augment the organizational profiles of Hamas or the Palestinian Islamic Jihad at the expense of the Palestinian Authority.[47]

Furthermore, the martyrdom operations allow Arafat's rivals to gain international prestige, foreign financial support, and increased domestic "market share" at his expense. The emerging groups of the Palestinian electorate—the young and the urban college-educated groups—typify this most clearly.[48] Among Palestinian youth, Arafat's popularity slips as suicide bombings proliferate. Arafat's approval rating was at 70 percent in September 2001, but within three months it slipped to 57 percent[49] and continued to decline until Israeli Prime Minister Sharon's incursions into the major West Bank towns in late March 2002 resuscitated Arafat's sagging popularity.

In most of the polls, more than 30 percent of the Palestinian public say that they "do not trust any of the current leaders"—leaving the field wide open for challengers. This group has potential for mobilization. Evidence suggests that with every suicide attack, the parties responsible for the bombings and other Islamic groups opposed to the Palestinian Authority are able to capture the support of people from this market share. Levels of support for Fatah might remain the same, but support for Hamas and Sheikh Yassin increases while the number of those polled who say they "don't trust any candidate" decreases at the same rate. Although there is some defection from Arafat's support base,[50] it is safe to assume that Hamas is winning the hearts and minds of the undecided. This is explained by the fact that groups engaged in suicide bombing appear to be proactive and capable of hurting the Israelis where they live. This positive image is something over which Palestinian organizations compete.

[44] Felicity Barringer, "Israel is Criticized for Restricting UN access in Gaza," *New York Times*, 20 May 2003.

[45] George Habash, interview, 20 June 2002, accessed on the PFLP website at http://www.pflp-pal.org/opinion/habash29-6-02.html, 20 May 2003.

[46] JMCC public opinion polls, "Palestinian Opinion Pulse," vol. 2 no. 4, June 2001, vol. 2 no. 6, October 2001, vol. 3 no. 7, January 2002, vol. 3 no. 8, April 2002, accessed at http://www.jmcc.org/publicpoll.opinion.html, 20 May 2002.

[47] Ben Lynfield, "As Hope Dwindles, Hamas Thrives," *Christian Science Monitor*, 10 December 2001, accessed at http://www.csmonitor.com/2001/1210/p1s1-wome.html, 20 May 2002.

[48] Roni Shaked, *Yedioth Ahronoth* (Hebrew), 25 April 2003, accessed through Lexis Nexis.

[49] JMCC poll, vol. 3 no. 7, January 2002.

[50] The August 2002 JMCC poll, *Ha'aretz*, "Poll: Majority of Palestinians Support PA Crackdown on Attacks," The Associated Press, 28 November 2002.

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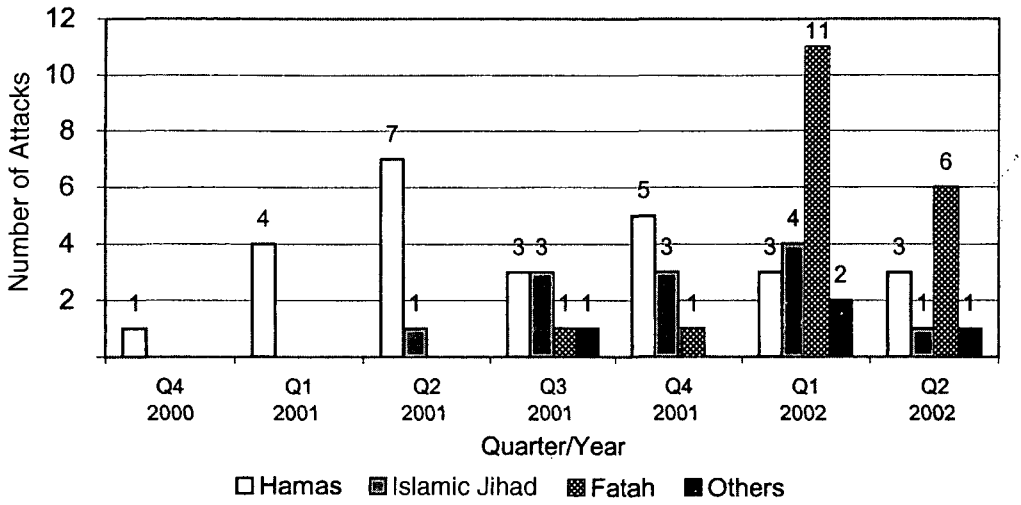
FIGURE 3
Proliferation of Groups Using Suicide Terror



Source: Assaf Moghadam, 2003 (from Israeli Ministry of Foreign Affairs, Ha'aretz, *Jerusalem Post*, and ICT).

Intragroup Competition and Outbidding

The suicide bombings have become bases of mobilization over which Hamas and Islamic Jihad compete for leadership by capturing the Palestinian imagination. Over time, more groups have jumped on the suicide-bombing bandwagon. There has been a proliferation of organizations using this tactic—some of which eschewed the tactic in the past. New groups have emerged, and previously secular groups have started using the language of religious holy war (*jihad*) to bandwagon onto Hamas's popularity, including: the DFLP (Democratic Front for the Liberation of Palestine), the PFLP (Popular Front for the Liberation of Palestine),[51] the al-Aqsa Martyrs' Brigade, and a new group calling itself an-Nathir (The Warning) (see Figure 3).

All of the groups vie for the right to claim each attack as their own. "Several Palestinian groups rushed forward to claim responsibility for the bus bombing—an indication of the competition among Palestinians for militant credibility."[52] Hamas and Islamic Jihad issued competing claims for responsibility for the 9 August 2001 attack on the Sbarro pizzeria (and rival claims that Izzedine al-Masri was *their* operative),[53] and Hamas and the PFLP issued competing claims for the 19 May 2002 attack on the Netanya market. No fewer than four different groups claimed credit for the bus bombing of 17 July 2002.

[51] PFLP leader George Habash denounced suicide bombings in interviews up until 2001.

[52] Joel Greenberg, "7 Killed, 17 Hurt in Ambush of Bus by Palestinians," *New York Times*, 17 July 2002.

[53] Davis, *Martyrs*, 140.

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Al-Jazeera television reported that the attack was carried out by the al-Aqsa Martyrs' Brigade, in cooperation with Hamas. The DFLP also claimed responsibility for the attack in a statement faxed to Reuters, the authenticity of which was confirmed by a DFLP spokesman in Beirut. "The military wing of the Democratic Front for the Liberation of Palestine announces its responsibility for the courageous attack that targeted a bus full of settlers," it said. Hamas and Islamic Jihad also claimed (separately) that they were responsible.[54]

The PFLP and Hamas both claimed the bombing of Mike's Place on 30 April 2003, although two British citizens of South Asian descent were responsible. Violence has become *the* source of all honor among Palestinians. According to Nichole Argo, martyrdom is a public good and a major source of honor in Palestinian society. Individual esteem is bound to group status, physically and symbolically. Sacrifice and risk employed on behalf of the group become valuable virtues, rewarded by social status. A PFLP would-be bomber told her, "You cannot win by yourself, but your sacrifice will help show the world the true nature of your sacrificial self, and of your inhuman opponent."[55] At a profoundly important—albeit symbolic level—martyrdom is the final and irrefutable statement of group worth and dignity. The martyrs (*shahids*) gain increased social status as a result of suicide bombing operations. According to Sheikh Abdel Aziz Rantisi, "For Hamas, and Palestinian society in general, becoming a martyr is among the highest if not the highest, honor."[56]

The portraits of the bombers have become symbols of resistance as political groups vie to claim responsibility for the individual martyrs. The martyrs' posters covering the storefronts of West Bank towns pay homage to the *intifada* dead. With each incident, new posters cover over the tattered remains of the previous photos, proclaiming the Koranic slogan, "the martyr is not dead, but lives on," and displaying the martyrs' political affiliation prominently. The martyrs become the main topic of conversation. People discuss how they were killed, assess the posters for the kinds of weaponry displayed around them, and occasionally deride the political factions who vie for the right to claim the dead as members of their organizations. "Some of these guys were never political; the factions just want to bolster their popularity."[57]

George Habash answered allegations that he deliberately claimed the responsibility for operatives that were not actually PFLP members. His defense betrays the organization's competitive spirit: "The PFLP . . . has never tried to take credit for operations or struggles that other heroes of the resistance from

[54] "7 Die in Attack on Immanual Bus," *Ha'aretz*, 17 July 2002.

[55] Nichole Argo, "The Banality of Evil: Understanding Today's Human Bombs," Policy Paper, Preventive Defense Project (Stanford, CA: Stanford University, unpublished ms., 2003), 13.

[56] Interview with Abdul Aziz al Rantisi cited in Mark Juergensmeyer, *Terror in the Mind of God: The Global Rise of Religious Violence* (Berkeley: University of California Press, 2000), 187–188.

[57] Lori Allen, "There Are Many Reasons Why: Suicide Bombers and Martyrs in Palestine," *Middle East Report: Barriers to Peace* 223 (Summer 2002), accessed at http://www.merip.org/mer/mer223/mer223.html, 20 May 2003.

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different patriotic or Islamic organizations have carried out. On the contrary, all of you know of the operations of our comrades who blew themselves up in occupied Jerusalem for which we did not announce our responsibility and which were claimed at that time by another organization. We in the Abu Ali Mustafa Brigades confirm again our responsibility for the heroic operation of blowing up the Zionist tank near the Netsarim Settlement. The first communiqué of the Brigades laid out the details of the operation just minutes after it took place. This can be considered clear proof that those who carried out the operation were the same ones who issued the communiqué with such precision and detail."[58]

In the polls conducted in 2000, support for the PFLP was lagging significantly. In 2001, the PFLP began to use suicide bombing as a strategy and even created, in the spring of 2001, a separate wing devoted exclusively to martyrdom operations called the Abu Ali Mustafa Brigades.[59] Between 2001 and 2002, the PFLP conducted 3 percent of all the attacks, and within months of its first attack (27 May 2001) and days after the PFLP exploded two car bombs, the Jerusalem Media and Communication Center (JMCC) poll of October 2001 placed PFLP support at 4.3 percent. The PFLP seemingly resuscitated its popularity by using suicide bombing as a tactic.

The al-Aqsa Martyrs' Brigades have also hinted at the competition between the various groups: "We announce with pride and dignity to you the martyrdom of Mohammed Hashaika from Tallouza village. This martyr who proved to all that there won't be peace, security or solution as long as . . . Sharon insists on keeping occupation and commits all kinds of ugly and atrocious crimes against our people. Martyr Hashaika, member of al-Aqsa Martyrs' Brigades, *proved that our Brigades are leading the path of Jihad* [emphasis added] and resistance and martyrdom until the Zionist occupation leaves our homeland forever" (see Figure 4).[60]

Organizational Backgrounds

Hamas is the Arabic acronym for the Harakat al Muqawamah al-Islamiyya (Islamic Resistance Movement), formed in 1987 as an outgrowth of the Muslim Brotherhood and the *Mujamma al-Islami*, and established in 1974 to provide much-needed social services to Palestinians under occupation. It operated out of the Gaza Strip and eventually spread to the West Bank.

Until the first *intifada* in 1987, the Israeli authorities avoided interfering with the organization as part of a strategy of divide and rule as a legitimate

[58] Palestinian People's Resistance Forces, Martyr Abu Ali Mustafa Brigades, the military wing of the Popular Front for the Liberation of Palestine, press statement, 15 March 2002.

[59] Mouin Rabbani, "A Tale of Two Assassinations: Mustafa Zibri and Rehavam Ze'evi," *Washington Report on Middle East Affairs*, August 2002, 13–14.

[60] Press statement issued by Nasser Oweis, leader of al-Aqsa Martyrs' Brigades in Palestine, 22 March 2002 (Arabic).

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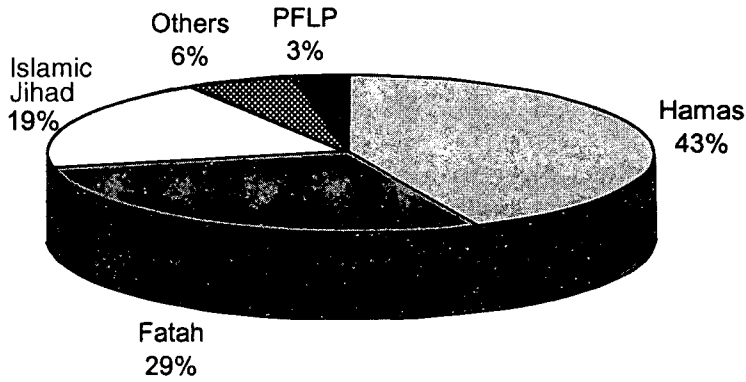
FIGURE 4
Percentages of Attacks by Organization, 2000–2002



Source: Assaf Moghadam, 2003.

alternative to Yasser Arafat's Palestinian Liberation Organization. Shaul Mishal and Avram Sela note that the Israelis did not block the organization nor did they arrest any of its members and, in turn, the organization did not perpetrate any attacks against Israel for the first two years of its existence.[61] These two years of relative quiescence led to allegations from the mainstream PLO that Israel and Hamas were in collusion. Arafat subscribed to this conspiracy theory saying, "We must remember that these organizations were created by Israel, which also distributes arms to them."[62] When they did turn to violent protest, Hamas effectively augmented its reputation with rank and file Palestinians.

By its participation in street violence and murder during the first *intifada*, Hamas boosted its appeal in the eyes of the Palestinians, further enhancing its growth potential and enabling it to play a central role in the *intifada.* As a result of its subversive activity, Hamas was outlawed in September 1989.[63]

Hamas's popularity threatened PLO hegemony as it became the leading terrorist organization throughout the Territories as well as inside Israel. In 1991, Zaccaria Walid Akel, the head of the terrorist section of Hamas in Gaza, set up the first squads of the militant Izz Eddin al-Qassam Battalions, which operated throughout the West Bank and Gaza. In its early operations, they kidnapped and executed Palestinian collaborators and routinely threatened Arafat.[64]

[61] Mishal and Sela, *Palestinian Hamas*, 36.

[62] *Ash-Sharq al-Awsat*, 1 April 1996, in Foreign Broadcast Information Service, 2 April 1996.

[63] www.ict.org.il; Haleh Hroub, *Hamas: Political Thought and Practice* (Washington, DC: Institute for Palestine Studies, August 2000).

[64] CNN *World*, 16 January 2002.

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However, in December 1991, the squads changed their modus operandi and began targeting Israelis. Hamas's leadership realized that militant activities and terror would not bring about their long-term goals, and so they devised long-term strategies and tactics. Earlier analysts stated that: "If suicide attacks, or the Israeli reaction to them, become harmful to the general Palestinian public and cause it to show qualms about them, Hamas might be forced to reconsider their value. For Hamas' leaders, the social and public meaning of their activity is no less important than its religious legitimacy."[65] In fact, the reverse happened; once Palestinians became convinced that military operations were their only option, support for suicide operations increased exponentially. According to Khalid Mish'al, Hamas recognized its limitations and its need to adjust its approach strategically: "We know that the current balance of power in the region does not allow us to achieve a decisive victory against the Zionists; however, we confidently believe that we are moving along the right path—the path of resistance. This choice will provide us with success in view of our accumulated achievements, our substantial ability to hold out, our will and strategic depth."[66]

Hamas's charitable associations had a dual function. On the one hand, they helped to channel funds into the region. While a portion of the funds was for charity, it was not always possible to distinguish between the charities and the funding of terrorist activities. The associations pay the fines and assist the families of operatives who have been arrested. Such donations are defined as charity but are directed only to the hard-core members. Hamas founds hospitals and pays for medical care, dentistry, and prenatal care within the Territories and provides multiple social services that the occupation does not provide. The benevolent associations have helped the organization gain credibility and support throughout all of Palestine. The fund pays $10,000–$25,000 per martyr, and so there is economic remuneration to underscore the institutionalization of suicide bombing.[67] Hamas appears to have several goals: to destroy Israel, to enhance its prestige among the Palestinians vis à vis the Palestinian Authority or other groups, to increase its appearance as a legitimate opposition, to promote ties with the Islamic world, to derail the peace process when it exists, and to defy the "Zionist entity."[68]

The Palestinian Islamic Jihad (*Harakat al Jihad al-Islami al Filastini*) was founded in 1979–1980 by Fathi Shikaki (assassinated by Israeli agents in 1995 in

[65] Reuven Paz, "Sleeping with the Enemy, A Reconciliation Process as Part of Counter-Terrorism. Is Hamas Capable of 'Hudnah'?" *Institute for Counter-Terrorism, Israel*, 25 June 1998, accessed at http://www.ict.org.il/articles/articledet.cfm?articleid=37, 2 May 2002.

[66] Khalid Mish'al, interview with Abdullah al-Qaq in Amman, *Amman al Dustur* (Arabic), 28 February 1998.

[67] Human Rights Watch Report, *Erased in a Moment: Suicide Bombing Attacks Against Israeli Civilians* (New York: Human Rights Watch Report, October 2002).

[68] Interviews/statements issued on al-Manar Television (Arabic); interview with Avi Jorisch, 13 February 2003.

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Malta), 'Abd al-'Aziz 'Odah, and Bashir Musa. It is a series of loosely affiliated factions rather than a cohesive group, and it is highly influenced by the Iranian revolutionary movement and focused exclusively on terrorism. Because of Israel's strong alliance with the United States, it also targets U.S. and moderate Arab governments that it believes are tainted by Western secularism.

In contrast to Hamas, Islamic Jihad does not have a network of social services (schools, mosques, clinics). Its charter promises to work for the destruction of the State of Israel through armed struggle, to replace Arafat's government with an Islamist state on the West Bank and Gaza, and to raise "the banner of Allah over every inch of Palestine."[69] Competition between Islamic Jihad and Hamas dates back to the first *intifada* when, according to Ahmad Rashad: "Jihad's spectacular acts of daring and courage in the 1980s lent credence to the Islamic movement in the occupied territories. Jihad's attacks against Israeli military targets set the stage for the Intifada . . . which spread rapidly due to the pride that Palestinians had begun to feel in the Jihad's actions. . . . Islamic Jihad's actions embarrassed Arafat and Hamas. But its brazen attacks increased the popularity of Islamic guerilla groups."[70]

The al-Aqsa Martyrs' Brigade, the military wing of Arafat's Fatah (Harakat al Tahrir al Falistiniya), was formally given the title after the September 2000 al-Aqsa *intifada.* The al-Aqsa Martyrs split off from the organization when the Palestinian Authority arrested the secretary-general of the PFLP, Ahmad Sa'adat, for killing Israeli right-wing Cabinet Minister Rechavam Ze'evi in October 2001. The PFLP claimed that Ze'evi was killed in retaliation for the killing of PFLP General Secretary Abu Ali Mustafa on 27 August 2001.[71] The al-Aqsa Martyrs' defection from Arafat demonstrated his growing weakness and isolation. However, in the raid of the Ramallah office of Fuad Shubeiki, head of the Palestinian Authority's financial apparatus, the Israel defence forces uncovered documents linking the Palestinian Authority and Fatah to the Brigades. The smoking gun document listed the financial demands of the al-Aqsa Martyrs' Brigade for bombings that had been carried out, and the fifth article on the document listed the costs for producing explosive devices and bombs.[72]

The PFLP combines Arab nationalism with Marxist-Leninist ideology and views the destruction of Israel as integral to ridding the Middle East of Western influence.[73] In the fall of 2001, the PFLP shifted its emphasis and began using

[69] Boaz Ganor, "The Islamic Jihad: The Imperative of Holy War," accessed at http://www.ict.org.il/articles/articledet.cfm?articleid=405 and http://www.ict.org.il/inter_ter/orgdet.cfm?orgid=28, 20 May 2002.

[70] Ahmad Rashad, *Hamas: Palestinian Politics with an Islamic Hue* (Annandale, VA: United Association for Studies and Research, 1993), 4.

[71] Graham Usher, "Arafat's Shrinking Dominion," *Al-Ahram Weekly Online*, 24–30 January 2002. Issue No. 570, accessed at http://weekly.ahram.org.eg/2002/570/re1.htm, May 2002.

[72] Jonathon Lis and Amira Haas, "Israel Presents Document Linking the PA to Terror Attacks," *Ha'aretz*, 2 April 2002.

[73] BBC News, 2 February 2002.

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both the tactic of suicide bombing and the language of *jihad* to attract a greater constituency to swell its ranks.[74] Palestinian support for the PFLP was lagging until the organization turned to suicide bombing, putting them back on the political radar screen. They managed to capture 3 percent of Palestinian support after their operations in the fall of 2001 and the creation of a militant wing named after Abu Ali Mustafa. Not to be left out, the DFLP claimed responsibility for a bus attack in July 2002, and yet another organization, al-Nathir, was one of several groups that "claimed responsibility for the [18 July 2002] Tel Aviv bombing, identified the attackers, and said they had come from the Balata refugee camp in Nablus. The group said it was linked to Yasir Arafat's Fatah movement. . . . The Islamic Jihad had previously claimed responsibility for the bombing."[75]

Since 1993, these groups have dispatched over 250 suicide bombers. The occurrences of suicide bombings do not correlate only with the peace process or negotiations. A broad examination of the number of attacks since Prime Minister Barak left office and Prime Minister Sharon took office indicates that suicide attacks are much more closely related to periods when Arafat is weaker and rival organizations compete to fill the power vacuum (see Figure 5).

Israeli Counterterror Policies

Faced with mounting attacks, Israeli policymakers responded with hard-line counterterror tactics of massive retaliation, targeted assassination of militant leaders, and demolitions to deter future bombings. Hamas and Islamic Jihad, as well as other groups, targeted Israeli civilians in public venues for maximum effect, killing and injuring as many civilians as they could. As *Jane's Defence Weekly* noted, "While some attacks are successful against military targets, most are carried out against civilians. As a Hamas training manual notes: 'it is foolish to hunt the tiger when there are plenty of sheep around.'"[76] The 27 March 2002 Passover bombing in Netanya prompted a rapid Israeli response launched on 29 March 2002.

Operation Protective Shield, launched to reoccupy seven of eight major Palestinian towns in Area A, had negative consequences for Israeli policy and its image abroad. Most countries rigorously condemned Israeli actions in Jenin

[74] PFLP Abu Ali Mustafa Brigades letter to Sheikh Nasrallah of the Lebanese Hezbullah, 28 April 2002, accessed at http://www.tao.ca/~solidarity/texts/palestine/PFLPcommuniques.html, 30 April 2003. PFLP communiqués begin with "to the masses of the Arab nation." This letter begins with "in the name of Allah, the Mercy-giving etc. . . ."

[75] Joel Greenberg, "Shock at Charges Palestinians Were Sold Israeli Munitions," *New York Times*, 19 July 2002.

[76] John Daly, "Suicide Bombing: No Warning and No Total Solution," *Jane's Defence Weekly*, 17 September 2001, accessed at http://www.janes.com/security/international_secutity/news/jtsm/jtsm010917_1_n.shtml, 20 May 2002.

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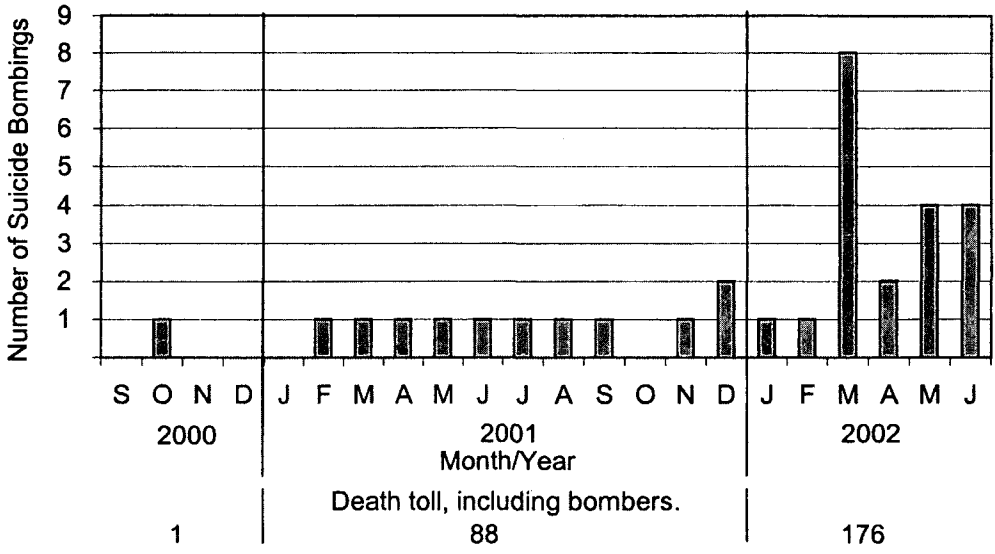
FIGURE 5
Suicide Bombings per Month since the Palestinian Uprising Began in September 2000



Source: *New York Times*, 19 June 2002.

and Qalqilya.[77] Surprisingly enough, Israelis rallied around the extreme right, thinking that hawkish policies would deter future attacks. In fact, the long-term ramifications on the Palestinian polity will encourage rather than deter future attacks. In essence, hard-line Israeli policy will probably backfire. The attacks after April 2002 and daily violence during the spring of 2003 demonstrated that despite Operation Protective Shield, reoccupation may temporarily slow the pace of the bombings but will not eliminate the scourge. These groups will engage in greater degrees of violence in competition for legitimacy and leadership of the Palestinian people. In fact, the present policy sows the seeds for future generations to swell the ranks of terrorist organizations by increasing incentives for groups to compete and outbid each other.

Motivations

In its constant quest for an explanation of why young men—and recently a few young women—decide to commit such acts, the Western press has primarily cited fanaticism and despair as reasons for suicide bombing.[78]

[77] See UN Security Council Resolution #1405, 19 April 2002; Human Rights Watch Report, "Israel/Occupied Territories: Jenin War Crimes Investigation Needed," accessed at http://www.hrw.org/press/2002/05/jenin0503.htm, posted 3 May 2002, 20 May 2003.

[78] Allen, "Many Reasons Why."

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Some people allege that the bombers suffer from low social status, few economic opportunities, or personality disorders.[79] Bruce Bueno de Mesquita argues that the suicide bombers have a financial incentive. "They are young men with no economic prospects and little education."[80] He adds, "There is a rational expectation on the part of suicide bombers that they are providing for their families."[81] However, evidence shows that these explanations are not consistent with each other or with reality. Most suicide bombers are not undereducated religious zealots who blindly follow the commands of the religious leadership, but rather they come from a middle or upper class background and have comparatively high levels of education.[82]

Nasra Hasan argues that many of the bombers have suffered humiliation and persecution at the hands of Israeli forces. However, she insists that they are not suffering from mental illness or personality disorders.[83] The issue of pain and personal loss features prominently in any analysis of suicide bombing, yet pain and suffering alone do not create the phenomenon; they must be coupled with an environment in which there is no outlet for expressing the rage and frustration that would motivate someone to use suicide bombing as a weapon. The excessive use of force on Israel's part, as well as collective punishment, check points, closures, and economic sanctions, have all contributed to the delegitimization of the peace process and the Palestinian Authority, and a general feeling of hopelessness (see Figure 6).[84]

All of these factors appear to be necessary, although insufficient, to explain suicide bombing, given that the majority of Palestinians have experienced humiliation as part of the thirty-five-year occupation and yet the number of suicide bombers remains statistically irrelevant compared to the Palestinian population as a whole (until very recently). Customary media depictions of the average suicide bomber driven to self-destruction by despair fail to convince most Palestinians. All Palestinians living under occupation, they say, are desperate. Humiliation and persecution are a "constant" under the occupation and cannot account for why there has been an upsurge in this phenomenon or why public opinion shifts in favor of suicide attacks at different times. Many Pales-

[79] Mouin Rabbanni, "Palestinian Authority, Israeli Rule: From Transitional Arrangement to Permanent Authority," *Middle East Report* (Fall 1996), accessed at http://www.merip.org/mer/mer201/rabbani.htm, 20 May 2002.

[80] David Plotz, "The Logic of Assassination: Why Israeli Murders and Palestinian Suicide Bombings Make Sense," *Slate Magazine*, accessed at http://slate.msn.com/?id=113987, posted 17 August 2001, accessed 10 April 2002. Krueger and Malekova's research proves otherwise. Alan B. Krueger and Jitka Malekova, "Education, Poverty, Political Violence and Terrorism: Is There a Causal Connection?" Princeton University working paper, July 2002, 9.

[81] Bruce Bueno de Mesquita, interview with the author, 18 March 2002.

[82] Krueger and Malekova, "Education, Poverty, Political Violence and Terrorism," 4, 28.

[83] Nasra Hassan, "Letter from Gaza: An Arsenal of Believers," *The New Yorker*, 19 November 2001, accessed at http://www.newyorker.com/fact/content/?011119fa_FACT1, 10 April 2002.

[84] Dr. Khalil Shikaki, interview with the author, 17 October 2002.

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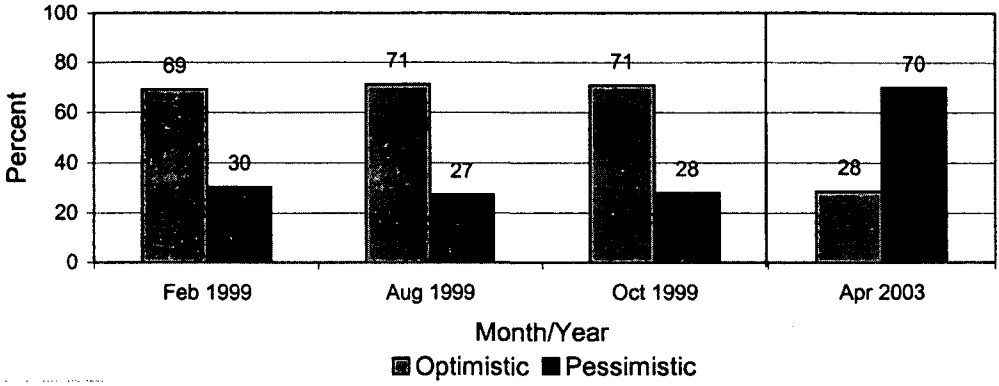
FIGURE 6
Palestinian Optimism for the Future



Source: JMCC polls February 1999–April 2003.

tinians view this portrayal as a way of denuding the attacks of their political aim: striking back at the Israeli occupation.[85]

Martyrdom reinforces the image of the Palestinians as an oppressed people, since this tactic is the quintessential "weapon of the weak." Terrorists make the moral claim that they are using such strategies only as a last resort and that only after peaceful means have failed or peace agreements have been abrogated have they turned to violence. The Palestinians know that they could not win a shooting war against the Israelis; they would be grossly outnumbered, due to Israel's overwhelming military superiority. The bombings may be intended to invite reprisals, causing the Israelis to massively retaliate and overreact, causing the outside intervention for which Arafat has been calling since the al-Aqsa *intifada* broke out.[86]

Several things may motivate the individual suicide bomber,[87] whereas the leadership appears strategically minded vis à vis domestic rivals in the Palestinian Authority and vis à vis the international rival, Israel. Islamic extremist groups sending out suicide bombers are participating in a two-level game. Their attacks are intended to hurt Israel and at the same time undermine the legitimacy of the Palestinian Authority. Suicide bombing is an effort to punish and deter Israeli actions and to create a "balance of terror." The Palestinians seek

[85] Allen, "Many Reasons Why."

[86] Alan J. Kuperman identifies a "moral hazard problem" in which minority groups deliberately incite the majority to act in a repressive fashion in order to force the hand of the international community to intervene. Palestinian calls for an international intervention after the Jenin massacre, the deliberate exaggeration of casualties, and fake bodies exhumed as evidence would appear to support Kuperman's hypothesis. "The Moral Hazard of Humanitarian Intervention" (paper prepared for the 2002 annual meeting of the International Studies Association, New Orleans, LA, 25–28 March 2002 and discussions with the author, 27 March 2002).

[87] Amira Haas, "Confessions of a Dangerous Mind," *Ha'aretz*, 3 April 2003.

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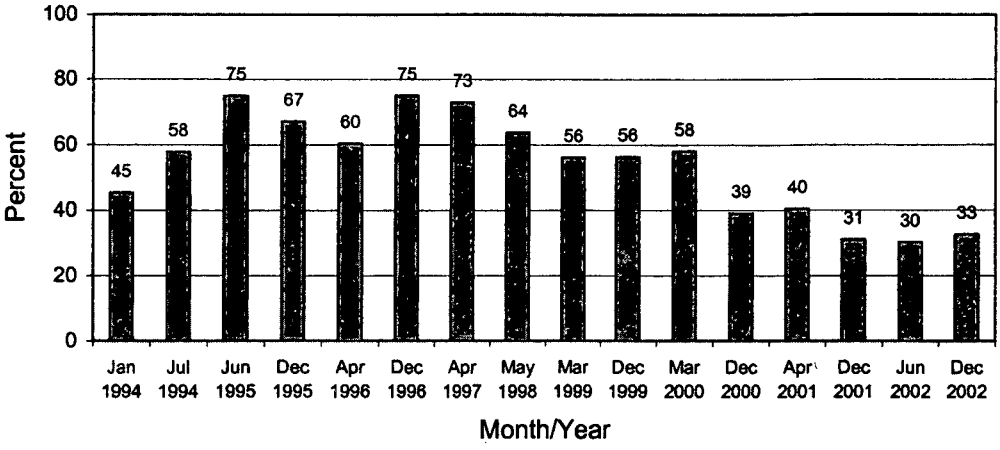
FIGURE 7
Support for Oslo Agreements Among Palestinians



Source: JMCC Poll December 2002.

to persuade Israelis that they will pay a high price for the occupation and to force them to pressure their government to withdraw from the Territories and thus end the occupation. The extension of the front to inside "green-line" Israel is to bring the war to the heart of Israel, where the majority of Israelis can no longer ignore the realities of the occupation. Through these attacks, they seek to wear down Israeli morale.[88]

This strategy has proven effective; inasmuch as Israelis fear going to public places, going shopping, or going out to eat, the suicide bombings have changed Israelis' lifestyles and assurance of security. During periods of deadlock, when most Israelis are comfortable with the status quo, Palestinian extremists know that something is required to tip the balance and change it. At the same time, with Arafat's leadership in crisis, several groups and individuals vie for control of a future Palestinian state and seek to place their imprimatur on what kind of state (for example, Islamic fundamentalist) will emerge.

Cycles of Violence

The unprecedented Israeli siege of the occupied territories constituted a turning point for Palestinian public opinion. The hermetic closure of the West Bank and Gaza Strip and the policy of "separation" removed any remaining ambiguities about the nature of post-Oslo Israeli-Palestinian relations (see Figure 7).

The defection of Fatah loyalists has swelled the ranks of the al-Aqsa Martyrs and al-Nathir. The violence has increasingly assumed a pattern of attrition. Although seemingly irrational, because the attacks and counter measures have

[88] Patrick Seale interview, *Al Hayat* (London), 13 September 2001.

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only generated more victims, Israel answers Palestinian suicide bombing by assassinating Hamas and Islamic Jihad leaders, the Palestinians respond with more bombings, and the Israelis retort with yet more assassinations.[89] The Israelis and Palestinians appear to be in a deadlocked battle of assassination-suicide bombing-assassination-suicide bombing in an unending causal loop. This call-and-response blood bath has radicalized the Palestinians, encouraging yet more "martyrs."

> Since Israel's first assassinations in 1995 and 1996, which reached a climax with the killing of Hamas's Yahiyeh Ayyash ("The Engineer") and the Islamic Jihad's leader, Fathi Shikaki, all of the assassinations have generated acts of revenge that have cost the lives of dozens of Israelis. The policy of assassination is a boomerang that hurts Israel badly.[90]

These tactics make a perverted kind of sense. Targeted assassination, renounced by almost every other democratic government and proscribed by international law, has been a standard operating procedure for Israel since the Black September Organization massacred eleven Israeli athletes at the 1972 Munich Olympics.[91] Israel has assassinated dozens of Hamas and Islamic Jihad members. The logic of targeted assassination is that murdering their operatives saps the effectiveness of Hamas and Islamic Jihad. The targeting not only neutralizes the dead men, but also forces the other terrorists to go underground. Because they know that Israel will kill them if they are found, the terrorists spend much of their time running or hiding and less time plotting terrorist attacks. Without skilled bomb makers and planners, Hamas and Islamic Jihad, it is reasoned, would have more difficulty in infiltrating Israel and carrying out their missions. Israel's logic, however, has proven fallible. Although several Palestinians have been caught before their bombs could detonate or have been killed or wounded while making the bombs,[92] the events of March 2002 demonstrated that the extremists' organizations are fully capable of replacing operatives as fast as Israeli targeted assassinations eliminate them. The suicide bombers have metamorphosed into a multiheaded hydra; for every one killed by Sharon's policies, another two appear to take his (and potentially her) place.

[89] The killing of Raed Karmi, the head of Fatah's military wing, in Tulkarm resulted in the suicide bombings in early March 2002. In an aerial bombardment of Gaza, the Israeli Army killed Salah Shehada, head of Hamas's Izz Eddin al-Qassam Brigades, 22 July 2002. Hamas vowed retaliation. "There is nothing in our hands but to respond with whatever power we have," said Dr. Mahmoud al-Zahar, a political leader of Hamas. "Every Israeli is a target now. No one will stop us from defending ourselves." Abdel Aziz Rantisi vowed revenge against Israelis: "We will hit them hard, they will be targeted, their houses and their families." *New York Times*, 23 July 2002. On 28 April 2003, Israel killed Nidal Salameh of the PFLP.

[90] Danny Rubinstein, "Assassination as a Boomerang," *Ha'aretz*, 6 March 2002.

[91] Simon Reeve, *One Day in September* (New York: Arcade Books, 2000), 70–93, 160–175.

[92] Joel Greenberg, "Coat, Backpack, Sweat: Close Call in Israeli Café," *New York Times*, 8 March 2002; see also Argo, "Banality of Evil," 13.

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Targeted assassinations have a political utility for the Israelis and are more media friendly—without the negative reputational effect that shooting stone-throwing children had during the first *intifada.* The most important benefit to Israelis might have been a psychological one. Assassination showed that the government was being proactive, counteracting the chaos brought about by the bombings and bringing precision and order back to the conflict. According to public opinion polls in Israel, this policy was widely supported.

Thus, suicide bombings and targeted assassinations may be considered case studies in the law of comparative advantage. Israel, where labor is expensive and capital is cheap, invests in assassinations, a high-tech strategy that requires lots of equipment but does not risk Israeli lives. By comparison, Palestinians possess neither tanks nor Apache helicopters. Thus, the Palestinians have adopted a labor-intensive strategy—literally throwing bodies at the problem.[93] Advocates have described the attacks as the most important "strategic weapon" of Palestinian resistance.[94] And while religious justification for the attacks is important for Muslims, secular groups have resorted to similar tactics.[95] George Habash, leader of the PFLP, substantiated this as a deliberate strategy: "The losses in manpower that the Israelis are sustaining are very high. The Zionist entity has not witnessed the likes of this high rate of loses in any period of battle in any of the past decades. According to the latest figures, the rate is one Israeli killed for every three Palestinian martyrs. This is despite the great differential or the great imbalance of power and the minimal fighting means and equipment available to the Palestinian people."[96]

Suicide bombings exact no significant cost on Hamas, Islamic Jihad, or any of the secular groups. Although each bombing episode sacrifices one supporter, it recruits many more. More people are willing to become suicide bombers now than in the past. In response to the upsurge of bombings, Ariel Sharon initiated counterterror policies that further enraged Palestinians and swelled the ranks of militant organizations. Israel tried to degrade the ranks of Hamas and Islamic Jihad faster than new volunteers could restore them. This tactic has been proven unsuccessful because they underestimated Palestinian resolve against the occupation and outrage at Israeli reprisals, which have swelled the ranks rather than draw down the number of suicide bombers.

Conclusions

Suicide attacks serve multiple purposes in addition to that of inflicting damage. They generate a huge amount of publicity for the cause. The emergence of the

[93] Plotz, "The Logic of Assassination," ibid.

[94] Abd al-'Aziz Rantisi on *Al-Jazeera This Morning*, Al-Jazeera (Doha), 20 May 2002.

[95] Haim Malka, "Must Innocents Die? The Islamic Debate over Suicide Attacks," *Middle East Quarterly* (Spring 2003), accessed at http://www.meforum.org/article/530, 20 May 2003.

[96] George Habash Interview, 20 June 2002, accessed on the PFLP website at http://www.pflp-pal.org/opinion/habash29-6-02.html, 4 June 2003.

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"CNN factor" has enabled global awareness, much like airliner hijackings did for the Palestinian cause in the late 1960s and 1970s.

In settings in which the power disparities are as great as between the Israelis and Palestinians, the question is: which insurgent tactics are appropriate? Disparities in relation to power and force are accentuated by the degree to which the media portrays Israeli victimization as humanized, while Palestinian victimization is reduced to statistical abstraction and treated as an unintended by-product of legitimate Israeli reprisals or enforcement actions. Palestinian violence is viewed as an extreme form of terrorism, while Israeli responses, even when directed at civilian targets, are at most criticized as "excessive force."[97]

There is a sense that terrorism is the quintessential weapon of the weak, that if groups had the ability to, they would refrain from using terror instrumentally. To avoid charges of terrorism, Palestinians must find ways to resist that do not rely on violence directed at Israeli citizens. Such a burden may be difficult, given the harshness of the occupation, but it can only be lifted by Palestinian ingenuity. However, there is no moral concern with regard to the idea of civilian immunity. For most Palestinians, there is no civilian immunity, due to Israel's universal conscription of men and women. From this perspective, all Israelis are complicit in the immoral and illegal occupation of the West Bank and Gaza; moreover, these very same civilians willingly twice elected a hawkish government that pursues the maximalist goals of a "Greater Israel."

Finally, terrorists use these strategies to delegitimize the state of Israel. Part of the Palestinian goal has been to force Israel's hand, drive it to retaliate massively and betray democratic principles, force it to rip off the mask of legal justice, and show it to be the ravening beast that the Palestinians claim it is. There are no military solutions to terrorism; the challenge is to preserve the state's legitimacy and, even in the face of atrocious acts, to hold its high ground. The failure to do so is to hand the terrorists an absolute victory.

There is a failed state in Palestine. The systematic destruction of the political, administrative, and social apparatus of the Palestinian Authority—in Israel's campaign to weed out the terrorists—has crushed the Palestinian Authority as an authority. Without a legitimate authority in Palestine, there is no real security for the state of Israel. Destroying the Palestinian Authority leads to increased lawlessness and windows of opportunity for more violence and new groups who will use martyrdom operations to increase their popularity. According to local human rights organizations, more than 2,289 Palestinians and 440 Israelis have been killed (some statistics place the number at 572 Israeli civilians), including hundreds of children and ninety suicide bombers. Approximately 24,407 Palestinians were injured between September 2000 and January 2004.[98]

[97] Richard Falk, interview with the author, 10 May 2002.

[98] JMCC, 20 April 2003, accessed at http://www.jmcc.org/banner/banner1/listmartyr.htm, 20 May 2003; B'tselem and Palestinian Red Crescent websites, www.btselem.org, and http://www.idf.il/daily_statistics/english/1.gif, accessed 11 January 2004; http://www.palestinercs.org/crisistables/table_of_figures.htm, accessed 11 January 2004; and http://news.bbc.co.uk/1/hi/world/middle_east/3256858.stm, accessed 12 January 2004.

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Ongoing closures and internal sieges have kept poverty and unemployment hovering just below 50 percent for months. A report from the Office of the United Nations Special Coordinator in the Occupied Territories put the initial cost of the al-Aqsa *intifada* between 2.4 and 3.2 billion dollars for the first year. Palestinian Authority revenues plummeted by 57 percent, and real income decreased by an average of 37 percent, resulting in 46 percent of Palestinians living below the poverty line—twice as many as previously.[99] In this environment, few Palestinians are prepared to disavow terror and more attacks will follow, regardless of Israeli countermeasures. It is only when Israeli policymakers conclude that force is not the solution and when the majority of the Palestinian polity feels a moral outrage against the martyrdom operations that suicide terrorism will cease to be a viable policy option.[100] In the short term, mass arrests, deportations, and targeted assassinations might have a nominal effect on the number of attacks inside Israel.

However, this research predicts that, in the long run, the number of attacks will increase because groups vying to lead the Palestinians will use violence as their main source of recruitment and mobilization. According to polls conducted by Khalil Shikaki, support for martyrdom operations against Israeli civilian and military targets remains high; however, there is also a willingness to return to the negotiation table if Israel is willing to fulfill the commitments made in Oslo. Consider Prime Minister Yitzhak Rabin's explanation to the Knesset on 18 April 1994 about why Israel should withdraw from Gaza:

> For 27 years we have been dominating another people against its will. For 27 years Palestinians in the territories . . . [have gotten] up in the morning harboring a fierce hatred for us, as Israelis and Jews . . . for which we are also, but not solely, responsible. We cannot deny that our continuing control over a foreign people who do not want us exacts a painful price: the price of continuing confrontation between us and them. . . . Hamas and Islamic Jihad . . . carried out most of the terrorist attacks, some on suicide missions. For two or three years, we have been facing a phenomenon of extremist Islamic terrorism, which recalls Hezbollah. . . . Israel and the Palestinian populations are so intertwined there are infinite opportunities for the rejectionist terrorists. There is no end to the targets. . . . Each Israeli, in the territories and inside sovereign Israel, including united Jerusalem, each bus, each home, is a target for their murderous plans. Since there is no separation between the two populations, the current situation creates endless possibilities for Hamas and the other organizations.[101]

[99] "Fifteen Months: Intifada, Closures, and Palestinian Economic Crisis—An Assessment," World Bank Report, 18 March 2002. The UNSCO data is included in the World Bank Report, accessed at http://lnweb18.worldbank.org/mna/mena.nsf/Attachments/complete/$File/complete.pdf, 20 April 2003.

[100] Sunhi Asila, "Hal hana waqtu waqf al 'amaliyyat al-istishadiyya?" (Arabic) Has the time come to end martyrdom operations? *Al Ahram*, 10 September 2002, 7.

[101] Robert A. Pape, unpublished manuscript citing an 18 April 1994 speech to the Israeli Knesset. "Rabin: Killing Civilians Won't Kill the Negotiations," *Jerusalem Post*, 13 April 1994; see also Robert A. Pape, "Strategic Logic of Suicide Terrorism," *The American Political Science Review* 97 (August 2003): 343–361.

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The experience of the past and Rabin's clear-eyed assessment give us additional reasons to recognize that Israeli policy must change before the violence will end. It is difficult to expect a country under siege to reward violence, and yet the current policy is a prescription for an intensification of attacks in the long term. Inasmuch as Israel can alter Palestinian perceptions of the conflict, they can control the environment and backdrop against which the attacks occur. The only solution is to negotiate with the secular groups and provide the Palestinians with a hopeful future so that the bombings cease to resonate positively with the majority of Palestinians. Once the public ceases to support these attacks, they will fail to mobilize the new generation and the nonaligned voter.*

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The Gingrich Effect

RANDALL STRAHAN
DANIEL J. PALAZZOLO

On Capitol Hill, like it or not, the 1990s was Newt Gingrich's decade. Certainly he made a major public splash as GOP leader, and who would deny that many of his much-noticed moves in that role were consequential?

—David R. Mayhew[1]

Newt Gingrich's leadership of the House Republican party presents an important opportunity to reconsider our understanding of leadership in the U.S. Congress. Two primary questions arise from a study of this case. First, to what extent are the actions of congressional leaders explained by the contexts within which they act and the expectations of their followers, as opposed to characteristics of individual leaders? And, second, how should theories be constructed to explain congressional leadership? One leading political science scholar has proposed that the Gingrich case provides evidence in support of a strictly contextual leadership theory, one that "omit[s] personality."[2] From this perspective, Newt Gingrich's leadership during the Republican "revolution" of the 104th Congress (1995–1996) and its aftermath "can be explained by changes in context that altered members' expectations."[3] Thus, Gingrich, along with other House leaders before him, acted the part of an agent responding to the expectations of his principals—the members of the majority party. In contrast,

[1] David R. Mayhew, *America's Congress: Actions in the Public Sphere, James Madison Through Newt Gingrich* (New Haven, CT: Yale University Press, 2002), ix.

[2] Barbara Sinclair, "Transformational Leader or Faithful Agent? Principal-Agent Theory and House Majority Party Leadership," *Legislative Studies Quarterly* 24 (August 1999): 423.

[3] Ibid., 421.

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we propose that a satisfactory explanation of Gingrich's leadership style must include both contextual factors and individual leader effects, specifically those resulting from Gingrich's own political goals and the orientation toward leadership that follows from those goals. On the basis of the evidence in this case, we also question whether the most common applications of principal-agent theory provide an adequate theoretical framework for explaining congressional leadership.

We make the case for the importance of leader effects in the politics of the Gingrich speakership as follows. First, we review recent work on congressional party leadership and propose an alternative to the "context-only" explanation of leadership style, one that incorporates both contextual factors and leader effects. Then we show why the evidence in support of a strictly contextual explanation of Gingrich's leadership style is inconclusive. Next, we consider evidence that demonstrates how Newt Gingrich's own goals and consequent view of leadership influenced his highly activist leadership style. This evidence shows that Gingrich took actions to influence the context in which he led and acted independently to shape the House as an institution, as well as his followers' expectations and policy goals. We then compare Gingrich's leadership style with that of his successor, Dennis Hastert, considering whether leader effects may help explain the noticeable shift in leadership styles that came with the change in leaders. Finally, we take up the question of how well Gingrich's leadership fits within the framework supplied by principal-agent theory.

Context, Individual Leader Goals, and House Leadership

The most recent statement of the context-only theory by Barbara Sinclair is partly a response to work by Randall Strahan and Ronald Peters, both of whom explain Gingrich's leadership as a function of both context and individual characteristics.[4] Peters and Strahan argue that individual leaders will sometimes encounter opportunities to act independently to influence leadership styles and the development of congressional institutions. This perspective is consistent with other leadership studies that assign significant causal effects to individual leaders' characteristics.[5]

[4] Ronald M. Peters, Jr., "The Republican Speakership" (paper delivered at the annual meeting of the American Political Science Association, San Francisco, 1996); and Randall Strahan, "Leadership in Institutional and Political Time: The Case of Newt Gingrich and the 104th Congress" (paper delivered annual meeting of the American Political Science Association, San Francisco, 1996).

[5] See Daniel J. Palazzolo, *The Speaker and the Budget: Leadership in the Post-Reform House of Representatives* (Pittsburgh, PA: University of Pittsburgh Press, 1992); John B. Bader, *Taking the Initiative: Leadership Agendas in Congress and the "Contract with America"* (Washington, DC: Georgetown University Press, 1996); Ronald M. Peters, Jr., *The American Speakership*, 2nd ed. (Baltimore, MD: Johns Hopkins University Press, 1997); John E. Owens, "The Return of Party Government in the US House of Representatives: Central Leadership—Committee Relations in the 104th Congress," *British Journal of Political Science* 27 (April 1997): 247–272; Randall Strahan, Vincent Moscardelli, Moshe Haspel, and Richard S. Wike, "The Clay Speakership Revisited," *Polity* 32 (Summer 2000): 561–593.

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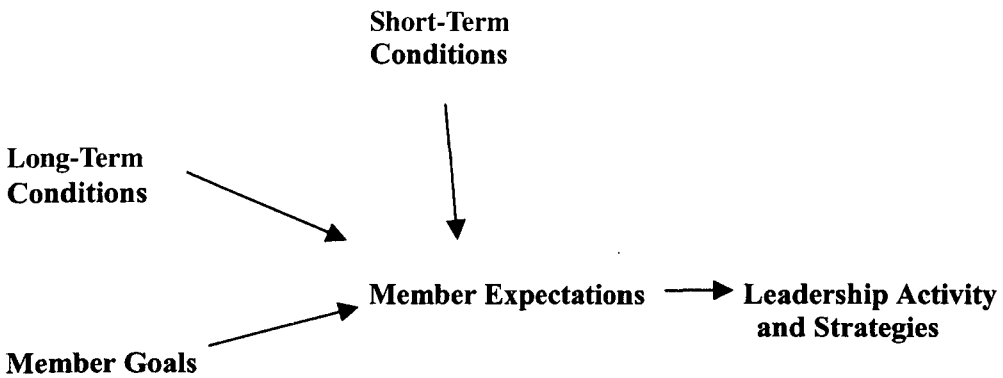
FIGURE 1
The Context-Only Theory of Leadership



By contrast, Sinclair's analysis of Gingrich's leadership focuses primarily on the long- and short-term institutional and political context to explain congressional leadership.[6] The most important long-term conditions are the degree of ideological or preference homogeneity among majority party members, and the institutional or political conditions that affect the difficulty of passing legislation that party members wish to see enacted. Long-term contextual factors determine the basic pattern of leadership activity, although short-term forces (lasting for one Congress or even one session) can also affect leadership activity in significant ways. Contextual factors and member goals (re-election, good public policy, and prestige) are the main causal variables in the theory. They interact to shape the members' expectations, which, in turn, determine leadership activity and strategies, the dependent variable in this framework (see Figure 1).[7]

Sinclair's contextual theory is framed as a version of principal-agent theory in which members delegate authority to leaders to satisfy the members' individual goals and solve collective action problems for their party, primarily those involved in passing legislation. Members decide how strong leaders will be by calculating the costs and benefits of delegating power to them. Leaders' self-interested ambition to hold elective leadership office motivates them to be responsive to what the members want: "To the extent that leaders value their

[6] See Joseph Cooper and David W. Brady, "Institutional Context and Leadership Style: The House from Cannon to Rayburn," *American Political Science Review* 75 (June 1981): 411–426; Charles O. Jones, "House Leadership in an Age of Reform" in Frank H. Mackaman, ed., *Understanding Congressional Leadership* (Washington, DC: CQ Press, 1981); David W. Rohde, *Parties and Leaders in the Postreform House* (Chicago: University of Chicago Press, 1991); Barbara Sinclair, "The Emergence of Strong Leadership in the 1980s House of Representatives," *Journal of Politics* 54 (August 1992): 657–684; and Barbara Sinclair, *Legislators, Leaders, and Lawmaking: The House of Representatives in the Postreform Era* (Baltimore, MD: Johns Hopkins University Press, 1995).

[7] Sinclair, "Transformational Leader or Faithful Agent?" 423–426, 434–435, 441–445; Sinclair, *Legislators, Leaders and Lawmaking*, 5–18, 48–52.

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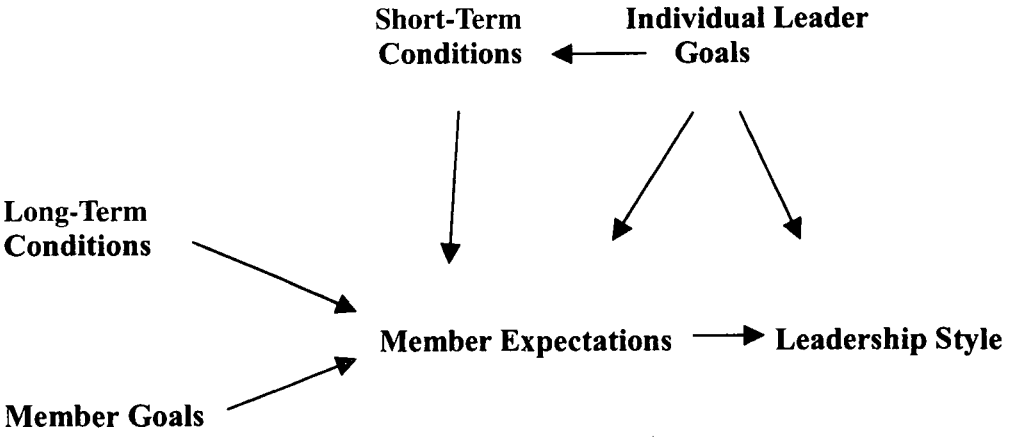
FIGURE 2
The Leader-Effects Framework



positions and want to retain them, they have an incentive to try to fulfill members' expectations."[8] This assumption about leaders' motivations is a critical link in the logic of the context-only theory; leaders *always* take their bearings from followers' expectations because leaders are motivated primarily by the goal of retaining their own leadership positions. As Figure 1 illustrates, all of the causal relationships in this theory run from contextual factors (through members' expectations) to the behavior of the leader. Variation in individual leader characteristics plays no role in explaining leadership activity or strategy.[9]

An alternative theoretical framework incorporating "leader effects"is summarized in Figure 2. This framework differs from the context-only theory in three important ways. First, it includes characteristics of leaders as a causal factor—specifically the individual leader's goals and orientation toward leadership that follows from those goals. While most House speakers probably do want to remain speaker and will normally act in ways consistent with that goal, we propose that leaders, along with other members, have multiple goals. Some have strong views on public policy. Some have more ambitious goals for their party, the House, and themselves than do others. As a consequence of these differing goals, individual leaders may view the job of House speaker differently and may not necessarily react in the same way to similar political contexts.

Second, in the "leader effects" framework, we define congressional leadership, the dependent variable, in terms of the broader concept of "leadership style." This concept has been widely used by scholars to characterize how a

[8] Sinclair, *Legislators, Leaders, and Lawmaking*, 18.

[9] Sinclair, "Transformational Leader or Faithful Agent?" 423. Sinclair does acknowledge that members sometimes give leaders "considerable leeway," but the context-only theory does not allow leaders to act independently of followers' expectations, nor for the possibility that different leaders might use the leeway they are granted to act differently or pursue different strategies under the same conditions.

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leader carries out basic leadership functions (for example, assignment of committee positions, agenda setting, policy formulation, coalition building, and party maintenance) and wields institutional powers.[10] Throughout the history of the House, leadership styles have varied across a continuum from hierarchical styles typically associated with more centralized organizational forms, to bargaining styles associated with more decentralized structures. Leaders employing hierarchical or strong leadership styles tend to be more active and aggressive in wielding institutional power to advance party goals and carry out leadership functions, while those employing weaker or more decentralized styles tend to be more restrained or permissive. As Steven S. Smith and Gerald Gamm have noted: "With his assumption of the Speaker's chair in January 1995, Newt Gingrich quickly, and deservedly, became known as the most assertive Speaker since Cannon."[11] Thus, in the Gingrich case, the central puzzle is how to explain a leadership style that at times approached the upper limit of the strong, activist end of the continuum, evoking comparisons to the styles of the strong speakers of the late nineteenth and early twentieth centuries.

A third way in which the leader effects framework differs from context-only theory is in proposing that individual leader goals can not only influence leadership style directly but can also do so indirectly, when those goals encourage leaders to engage in efforts to influence the short-term political context or work actively to shape their followers' expectations. In the continuum of possible leadership styles, the most activist style of House leadership is defined, not only by aggressive use of institutional prerogatives, but also by the propensity of the leader to get out ahead of the members and attempt to shape their expectations in a way congruent with the leader's own goals. Here we do *not* refer to situations in which a leader is anticipating his or her followers' existing expectations or preferences and acting on that basis, but to those in which the leader is seeking to define or change followers' expectations.

In sum, the leader-effects framework proposes that leaders' goals vary and that some leaders' goals will encourage them to attempt to influence both short-term conditions and member expectations, which, in turn, affect constraints and opportunities for leadership. This framework also proposes that variations in leaders' personal goals can also produce direct, independent, non-trivial effects on leadership style. With this framework in mind, we turn now to the question of evidence for and against a Gingrich effect, focusing primarily on the politics of the 104th Congress (1995–1996).

[10] Among congressional leadership studies, the concept of "leadership style" is given fullest treatment by Cooper and Brady, who elucidated the hierarchical/centralized and the bargaining/decentralized styles in their analyses of the Cannon and Rayburn speakerships; see Cooper and Brady, "Institutional Context and Leadership Style." Sinclair's work has focused on measures closely related to these concepts of leadership style, specifically leadership strength as measured by activity at different stages of the legislative process and strategies for carrying out certain key functions.

[11] Steven S. Smith and Gerald Gamm, "The Dynamics of Party Government in Congress" in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered*, 7th ed (Washington, DC: CQ Press, 2001), 260.

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A Context-Only Explanation for Gingrich's Leadership

Sinclair cites three types of evidence to support the strictly contextual explanation: data on leadership involvement in major legislation, data on leadership involvement in agenda-setting, and several narrative accounts of Speaker Gingrich's leadership strategies. Her central hypothesis is that the underlying continuity in long-term contextual conditions from the late 1970s through the 104th Congress should produce similar continuity in leadership activity and strategies. According to Sinclair, institutional reforms that enhanced the speaker's powers, a variety of factors (including periods of divided government) that made passing legislation more difficult for majority party members, and increased homogeneity of preferences among members of both parties, all contributed to a context in which members had come to expect activist leadership well before Gingrich became speaker. She concludes from reviewing evidence on the Gingrich speakership: "as P-A [principal-agent] theory leads us to expect, Gingrich's leadership strategies as Speaker show considerable continuity with those of recent Democratic leaderships."[12]

However, as Sinclair acknowledges, her data and narrative accounts provide evidence of some considerable discontinuities in leadership behavior as well. For example, Gingrich had pursued an aggressive majority-building strategy that "differentiates him from other 20th-century speakers."[13] In terms of prominence in agenda setting, "the Gingrich leadership's role in the 104th does stand out as *uniquely high.*"[14] Sinclair also notes that Gingrich went well beyond his Democratic predecessors in making political communications a central feature of leadership strategy.[15] Moreover, when dealing with members and committees, Gingrich used the speaker's leadership tools "more aggressively than *any* of his post-reform predecessors."[16]

Sinclair's principal challenge, then, is to show why this evidence, which seems to show some fairly striking shifts in leadership behavior coinciding with Gingrich's rise to the speakership, supports a strictly contextual explanation. First, she contends that almost all of the features of Republican leadership politics in the 104th Congress had antecedents of one form or another in other post-reform Democratic speakerships. For example, the unusually high level of leadership involvement in legislation during the 104th Congress "is by no means unprecedented; the Wright leadership in the 100th Congress was almost identically active."[17]

Second, in her view, the extraordinary leadership behavior that occurred in the 104th Congress should be attributed to short-term factors that followed

[12] Sinclair, "Transformational Leader or Faithful Agent?" 432; see also 427.

[13] Ibid., 432.

[14] Ibid., 426 (emphasis ours).

[15] Ibid., 430.

[16] Ibid., 434 (emphasis ours). By "postreform" Sinclair and other scholars refer to developments that followed the extensive congressional reforms of the 1970s.

[17] Ibid., 426.

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from the unexpected Republican victory in the 1994 election.[18] Thus, while previous Democratic speakers benefitted from long-term factors that favored strong leadership, "No Democratic leaders during the post-reform era enjoyed the sort of political context that allowed Gingrich's actions."[19]

Finally, Sinclair proposes a third argument regarding leadership behavior that might otherwise appear to contradict both the continuity hypothesis and the short-term context qualification. Members of a unified party are said to support strong, innovative leadership so long as it is confined to "means" rather than "ends." Note, for example, her treatment of Gingrich's role in developing the Contract with America, which preceded the 1994 election outcome, yet provided the basis for his ability to dominate the congressional agenda during the early period of his speakership: "The Contract with America was an innovation . . . no leader had previously made an agenda the centerpiece of a nationalized congressional campaign. However, in no sense did Gingrich impose the Contract on House Republican candidates or members . . . . Thus, Gingrich came up with an innovative means of furthering his members' goals; he did not alter their goals or substitute his for theirs."[20] And, "Gingrich's innovation in agenda setting fits comfortably within the P-A theory because it involved means, not ends."[21]

The problem with this explanation of the Gingrich speakership lies, not with the evidence presented, but with the interpretation of it. Rather than providing strong confirmation of a strictly contextual theory, this evidence is inconclusive for distinguishing between the context-only theory depicted in Figure 1 and the alternative leader-effects theory depicted in Figure 2. While Sinclair relies on short-term conditions surrounding the 1994 election to explain discontinuities in leadership behavior, the simultaneity of Gingrich's election to the speakership makes it difficult, if not impossible, to eliminate individual leader effects from an explanation of leadership activity in the 104th Congress.[22] As we demonstrate below, Gingrich's increased involvement in legislation, more aggressive agenda-setting role, and activist leadership style were also entirely consistent with his personal goals and understanding of leadership. Contextual

[18] Ibid., 425–426, 432–435, 441.

[19] Ibid., 435.

[20] Ibid., 427.

[21] Ibid., 426.

[22] Sinclair also contends that the failure of Gingrich's budget strategy in late 1995 undermined his standing among House Republicans and "altered the political context drastically." Ibid., 441. In turn, she contends that by mid-1996 Gingrich had adopted a less aggressive leadership style, including offering less direction to standing committees. While space does not allow us to take up this point in detail, there is also evidence that aspects of Gingrich's activist leadership style were in fact present throughout his speakership. House Appropriations Committee Chair Robert Livingston, for example, observed that the speaker's intervention in the work of his committee increased in the later period: ". . . the more time went on, the more Newt tried to play in my sand box. And in the last year he really did seem to be trying to run the entire Congress right out of the speaker's office." Robert Livingston, interview by Daniel J. Palazzolo and Randall Strahan, 11 July 2002.

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theory can suggest that short-term conditions allowed discontinuities or innovations in leadership activity, but the presence of some unusual short-term conditions does not establish that there were no significant effects arising from individual leader goals. And if Newt Gingrich personally played a critical role in creating the short-term conditions that encouraged his followers to grant him unusually broad latitude as speaker, the innovative moves he made under these circumstances provide evidence of individual leader effects in any case. As we show below, there is much evidence that Gingrich's leadership style as speaker involved not only responding to party members' expectations and preferences but also the pursuit of his own goals and efforts to shape followers' expectations in ways consistent with those goals.

Newt Gingrich's Goals

"Newt Gingrich," wrote Ronald M. Peters, "is the most complex person to have served as speaker of the House, and his speakership reflects the complexity of his persona."[23] Readers interested in a full rendering of Newt Gingrich as eclectic intellectual, party-builder, organizational strategist, and national political leader are well-advised to consult Peters's account of the personal characteristics that distinguish Gingrich from all others who have held the speakership over the history of that office. Our purpose here is to identify two key characteristics: the leader's goals and orientation toward leadership.

For those with any familiarity with Newt Gingrich's political career, we do not think it will be controversial to identify two broad political goals and two more specific policy goals as objectives to which Gingrich was personally strongly committed. First, in the broadest sense, Newt Gingrich's personal goal was to be, himself, a transformational actor on the stage of American history. As Gingrich stated: "My first goal was to drive the system as hard as I could, to reshape the way the system worked. . . . I had no interest in being a managerial speaker."[24] He believed from his study of history that individual leaders willing to take big risks have at times been critical to the development of organizations, not to mention the fate of nations.[25] "As somebody who took history as a vocational degree, I spent a lot of time studying leadership. You cannot achieve historic change by setting rational goals; the goals you set will be inherently irrational because rational goals always exist within a non-transformational context."[26] Before becoming speaker, Gingrich had a history as an organizer and mobilizer who had demonstrated a willingness to take risks and act independently of others to advance his vision for the Republican party and the

[23] Peters, *The American Speakership*, 299.

[24] Newt Gingrich, interview with Daniel J. Palazzolo and Randall Strahan, 22 January 2003.

[25] See, for example, Stephen Ambrose, "The Newt Frontier," *George*, August 1996, 74; Newt Gingrich, *To Renew America* (New York: HarperCollins, 1995), 16.

[26] Gingrich, interview.

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country.[27] Gingrich viewed the speakership as a means of advancing a broad, transformative national program. As he has explained: "there were enormous differences between the role of the previous Democratic Speakers and my role. They had been essentially *legislative leaders* . . . I, on the other hand, was essentially a *political leader* . . . seeking to do nothing less than reshape the federal government along with the political culture of the nation."[28] Gingrich's former chief of staff, Dan Meyer, explained what this view of leadership meant in operational terms: "I have heard Newt say being speaker of the House is his third most important job. The first was defining the movement, the direction we are going; the second was being leader of his party; the third was being speaker of the House."[29] Gingrich's orientation toward leadership thus encompassed much more than simply carrying out the traditional functions of the speakership.

Second, Gingrich had devoted considerable attention to the theory and practice of orchestrating change in organizations, and he was committed to producing institutional change in the House. "One of my goals," he once stated, "is to make the House co-equal with the White House."[30] In Gingrich's view, producing organizational and policy change on this scale would involve changing members' expectations rather than simply responding to them. As longtime Gingrich ally Vin Weber explained, "Newt felt that if they were to achieve a real realignment of the country, it would take more than gaining a majority. It would mean changing the expectations of members of Congress in a very fundamental way. It would mean changing their expectations about their schedule, their work habits, and ultimately their expectations about what is possible politically."[31]

In addition to these broad political goals, Newt Gingrich was also strongly committed to two more specific policy goals—balancing the federal budget and cutting taxes. Long before he became speaker, Gingrich had been a strong advocate of a balanced federal budget. At a time when many of his most conservative allies were downplaying the importance of budget deficits, Gingrich devoted an entire chapter of his 1984 book, *Window of Opportunity*, to the topic "Why Balancing the Budget is Vital." In Gingrich's analysis, enacting a balanced budget would shift the terms of the national political debate in a direction

[27] See Dan Balz and Serge F. Kovaleski, "In Bush Budget Revolt, Gingrich Took the Reins," *Washington Post*, 21 December 1994; Connie Bruck, "The Politics of Perception," *The New Yorker*, 9 October 1995, 50–77; William F. Connelly, Jr. and John J. Pitney, *Congress' Permanent Minority? Republicans in the U.S. House* (Lanham, MD: Rowman and Littlefield, 1994), 63; Peters, *The Republican Speakership*, 299–303.

[28] Newt Gingrich, *Lessons Learned the Hard Way: A Personal Report* (New York: HarperCollins 1998), 37 (emphasis ours). See also Elizabeth Drew, *Showdown: The Struggle Between the Gingrich Congress and the Clinton White House* (New York: Simon and Schuster, 1996), 275.

[29] Dan Meyer, interview with Randall Strahan, 23 June 1997.

[30] Quoted in Stephan Gettinger, "'Contract': Just a Step in Speaker's Plan," *Congressional Quarterly Weekly Report*, 29 April 1995, 1206.

[31] Quoted in Drew, *Showdown*, 36.

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favorable to conservatives. Moreover, re-establishing a balanced budget as the norm in American politics would be an effective means of restraining the spending growth on which the "liberal welfare state" and its supporting political coalition depended.[32] Thus, over a decade before he became speaker, Gingrich had conceived the idea of using a balanced-budget initiative as a key strategic vehicle for effecting the larger transformation he was seeking in American politics.

A second specific policy goal was cutting taxes, which Gingrich viewed as a signature political issue for the Republican party. During the 1980s, he became an outspoken critic of tax increases to reduce budget deficits and was one of a group of House conservatives who successfully pushed for a plank in the 1984 Republican platform ruling out future tax hikes. In one of his most visible actions as minority whip, Gingrich broke with President George H.W. Bush in 1990 and refused to support a budget package that included tax increases and eliminated a capital gains tax reduction that had previously passed the House. He later sharply criticized Bush's decision to abandon cuts in capital gains taxes and reverse ground on his "no new taxes" pledge. Interestingly, Gingrich's criticism was framed much more in political than economic policy terms: ". . . this was a defining moment in his presidency, and in the conservative movement. Because in the end, we either believed in cutting taxes or we were like liberal Democrats. I mean, I don't think there's any space for tax increasing Republicans . . . raising taxes, I think kills conservatism."[33] As we show below, both Gingrich's ambitious political goals and his strong commitment to certain specific policy goals help to explain why his leadership style incorporated active attempts to alter the political context and shape his followers' expectations, in addition to performing the normal functions other House leaders have undertaken.

Leader Effects in the Politics of the Gingrich Speakership

We offer four types of evidence from the Gingrich speakership that show the limitations of the context-only theory and illustrate the effects of an individual leader's goals on leadership style. First, we show how Gingrich influenced short-term contextual conditions and members' expectations. Second, we look at a number of actions Gingrich took as speaker that helped define his activist leadership style. In each of these cases, Gingrich acted in ways consistent with his own goals before there was any clear indication of his followers' expectations or preferences. Third, we provide evidence to meet the most demanding test of individual leader effects: that Gingrich acted independently to induce members to change their preferences, not only about "means," but about

[32] Newt Gingrich, *Window of Opportunity* (New York: Tor Books, 1984), 184–204.

[33] "American Profile: Newt Gingrich," C-SPAN Transcript, Recorded 30 July 1999, http: www.c-span.org/guide/americanprofiles/newt_transcript.asp.

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"ends" or "goals" on a highly visible policy issue. Finally, we offer an initial comparison of the leadership styles of Gingrich and his successor, Dennis Hastert. We find evidence suggestive of individual leader effects here as well—both from the differing individual goals of Newt Gingrich and Dennis Hastert and in a context shaped in part by members' reactions *against* Gingrich's distinctive leadership style.

Shaping Short-Term Conditions and Members' Expectations: Building a Majority and Defining the Agenda

We concur with Sinclair's observation that Gingrich's unusually strong, centralized leadership was consistent with short-term conditions. The 1994 election results gave the Republicans a House majority for the first time in forty years, and the Contract with America provided a predetermined agenda for the 104th Congress.[34] Gingrich had also forged a close political alliance between himself and the seventy-four Republican freshmen elected in 1994. In addition, the politics of the House of Representatives during the 104th Congress were largely defined by the ideological polarization between the two parties and the high level of agreement on policy goals among House Republicans—especially the more junior members.[35] Partisan majorities opposed one another on 73 percent of votes taken in the first session of the 104th Congress and House Republican party unity scores reached extraordinary levels—on average, 91 percent.[36] As John Aldrich and David Rohde have pointed out, these are textbook conditions for the emergence of strong, centralized party leadership.[37]

However, if we step back and consider the sources of the high degree of preference homogeneity among House Republicans and the sequence of events through which the new Republican majority won control, we find that Newt Gingrich played an important role in creating those conditions. We disagree with Sinclair, who states that Gingrich's efforts in building the Republican majority are irrelevant to the question of individual leader effects because he had "carried out much of this activity . . . before he was elected to the party leadership."[38] Efforts by Newt Gingrich to foster partisan confrontation in the House beginning in the 1980s, to recruit, train, and mobilize resources for Republican candidates and to build agreement on a party program through the Contract

[34] Whether the Republican victory actually indicated broad public support for all the policies in the Contract is a different question. See Richard Fenno, Jr., *Learning to Govern* (Washington, DC: Brookings Institution, 1997), 5–9; and Demetrios Caraley, "Dismantling the Federal Safety Net: Fictions Versus Realities," *Political Science Quarterly* 111 (Summer 1996): 239–241.

[35] See Drew, *Showdown*, 23–24; James G. Gimpel, *Fulfilling the Contract: The First 100 Days* (Boston: Allyn and Bacon, 1996), 12–14; John Aldrich and David Rohde, "The Transition to Republican Rule in the House," 562–564.

[36] Dan Carney, "As Hostilities Rage on the Hill, Partisan-Vote Rate Soars," *Congressional Quarterly Weekly Report*, 27 January 1996, 199.

[37] Aldrich and Rohde, "The Transition to Republican Rule in the House," 21.

[38] Sinclair, "Transformational Leader or Faithful Agent?" 432.

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led Republican members to believe that Gingrich personally had played an important role in bringing about the Republican majority.[39] To the extent that these beliefs affected members' expectations about leadership after the 1994 election victory, Gingrich had a hand in shaping short-term conditions and his followers' expectations; he was not merely responding to them.

Though it is difficult to determine just how many members of the Republican conference might have been influenced by recruitment efforts undertaken by Gingrich's GOPAC organization, tapes conveying Gingrich's ideas and strategic advice were sent to thousands of candidates.[40] As Peters notes: "During the 1992 and 1994 election cycles many GOP House candidates attended GOPAC training seminars, and almost all listened to GOPAC audio tapes featuring strategic advice, campaign themes, and general philosophy by Newt Gingrich."[41] Among the members who acknowledged being influenced by Gingrich's efforts were John Boehner of Ohio and Roger Wicker of Mississippi. Said Boehner: "I started getting tapes in 1986 or 1987. I thought, this is great. . . . If it weren't for the tapes, I probably wouldn't have run for Congress."[42] Wicker, who was elected leader of the big Republican freshman class in the 104th Congress, stated that he had listened attentively to GOPAC tapes over a seven- to eight-year period, and: "A great deal of the philosophy I brought to Washington was shaped by Newt Gingrich."[43]

Gingrich also provided critical leadership in raising money for Republican candidates. In 1993, he led an initiative requesting that incumbents from safe seats contribute to the Republican National Campaign Committee (RNCC). The results were impressive. In 1992, only twelve Republican incumbents were active in raising funds for the RNCC, and they raised only about $50,000; in 1994, 130 House Republicans engaged in fundraising and collected over $6 million.[44] Gary Jacobson points out that, although Republican challengers in 1994 had only an average level of experience compared with previous election cycles, they were better funded than Democratic challengers. These differences mattered, as Jacobson found that campaign spending was a significant variable explaining House election outcomes in 1994.[45]

Another example of Gingrich's ongoing effort to shape the leadership context in the House was his role in conceiving and overseeing the development of the Republican Contract with America. Though understood by most Repub-

[39] On the importance of these activities for shaping members' expectations, see also Peters, "Institutional Context and Leadership Style: The Case of Newt Gingrich," 49–51.

[40] Balz and Kovaleski, "In Bush Budget Revolt, Gingrich Took the Reins."

[41] Peters, *The Republican Speakership*, 4.

[42] Balz and Kovaleski, "In Bush Budget Revolt, Gingrich Took the Reins."

[43] Daniel J. Balz and Ronald Brownstein, *Storming the Gates: Protest Politics and the Republican Revival* (Boston: Little, Brown, 1996), 146; see also Bruck, "Politics of Perception," 62–63.

[44] Gimpel, *Fulfilling the Contract*, 11.

[45] Gary C. Jacobson, "The 1994 House Elections In Perspective," *Political Science Quarterly* 111 (Summer 1996): 203–223.

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licans primarily as a campaign document, after the surprising 1994 election victory, it provided an agenda that the Republican leadership had already been authorized to pursue aggressively. Sinclair points out that the Contract was developed through a bottom-up, inclusionary process in which party rank-and-file, rather than leaders, determined the content.[46] Many Republican members did participate, but virtually every observer who has looked closely at the development of the Contract agrees that Gingrich conceived the idea, set it in motion, and played an important role in deciding which issues would be included.[47] As a longtime Republican leadership staffer described Gingrich's role: "He was very good on the Contract With America getting people together and finding common ground, but he was also pushing the system in that direction. By creating the limits he would lead everyone to the conclusion he wanted to lead them to . . . it was 'small d' democracy but it was also very 'led' democracy."[48] As Mayhew has succinctly put it: "without Newt Gingrich, no Contract with America."[49]

Many factors converged in 1994 to produce the first Republican majority in decades.[50] A strategy Gingrich had conceived and built support for within the party appeared to many of his fellow partisans to have been one of the most important of those factors. As a result, many Republicans were disposed to give the new speaker considerable leeway on both organizational and policy matters. Freshman John Christensen (R-NE) exemplifies the level of trust many members expressed in the majority leadership after the 1994 elections: "I trust the leadership with everything. . . . I trust their decision-making and their vision for the country."[51] Confidence in Gingrich was also high among moderate Republicans. As Sherwood Boehlert (R-NY) explained during the early months of the 104th Congress: "I have no doubt that we are in the majority today because of Newt Gingrich. People would ask why a Rockefeller Republican could support a conservative firebrand from Georgia. I'd say, 'He's brilliant, he's innovative, he's focused, he's disciplined. And there's another factor: I want to be in the majority.'"[52]

Gingrich's top staff persons at the time were struck by the extraordinary influence conferred on him by his successful effort in leading Republicans to a House majority at the outset of his speakership. As his chief of staff, Dan Meyer, commented: "People credited him with winning the majority. . . . He had tremendous authority at that point to do things. He was not challenged at

[46] Sinclair, "Transformational Leader or Faithful Agent?" 427, 429.

[47] See especially Gimpel, *Fulfilling the Contract*, 16–21; see also Drew, *Showdown*, 28–33; and Balz and Brownstein, *Storming the Gates*, 37–43.

[48] Ralph Hellman, interview with Daniel J. Palazzolo and Randall Strahan, 11 July 2002.

[49] Mayhew, *America's Congress*, 24.

[50] See Jacobson, "The 1994 House Elections In Perspective."

[51] David S. Cloud, "Gingrich Clears the Path for Republican Advance," *Congressional Quarterly Weekly Report*, 19 November 1994, 3322.

[52] Drew, *Showdown*, 106.

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that point."[53] The speaker's floor assistant at the time, Leonard Swineheart, stated: "He was a hero, a Moses who led them out of the wilderness and he could do what he damn well pleased."[54] Thus, it seems clear that Newt Gingrich's activity in pursuit of his unusually ambitious political goals prior to 1994 had effects on the short-term contextual conditions and member expectations he encountered as speaker after Republicans won control of the House.

Organizing the House and Assigning Committee Chairs

Soon after Republicans won the House majority in 1994—even before he was formally elected speaker—Gingrich moved quickly to begin to organize the House. As Sinclair and others have noted, the distinctive feature of the new Republican regime in the House was the subordination of the standing committees to the party leadership to a greater degree than had been achieved by even the most active of recent Democratic speakers.[55]

One of the most striking and significant organizational moves Gingrich made was to skip over senior members in naming the chairs of the Appropriations, Commerce, and Judiciary committees. Aldrich and Rohde's account makes clear the degree to which the not-yet-speaker was acting ahead of any clear signal from his party conference:

> Unlike the case of the Democrats 20 years earlier this was not an instance in which pressure from freshman insurgents played a major role. . . . Virtually none of the newly-elected freshmen had come to town; they could not have been consulted about the choices, much less have initiated or urged them. Well before the Republican Conference could meet, and before any formal change in the method of choosing committee chairs could be considered, Gingrich and his allies asserted the power to choose the chairs of the committees that were most important to them.[56]

Because none of these moves was subsequently reversed by the Republican Conference, we can infer in retrospect that Gingrich's actions did not contravene the expectations of House Republicans. Given the extraordinary authority that had been conferred upon him by the unexpected election victory, Gingrich may have anticipated that the members would not challenge his decision to override seniority. But it is also clear that Gingrich was not responding to his followers' expectations. As noted, Gingrich was strongly committed personally to transforming the House as an institution, and he took the opportunity presented by the conditions surrounding the 1994 election outcome to advance his goal of further reducing the capacity of standing committees to operate in-

[53] Meyer, interview.

[54] Leonard Swinehart, interview with Randall Strahan, 27 June 1996.

[55] See also Steven S. Smith and Eric D. Lawrence, "Party Control of Committees and in the Republican Congress" in Lawrence C. Dodd and Bruce I. Oppenheimer, ed., *Congress Reconsidered*, 6th ed. (Washington, DC: CQ Press, 1997).

[56] Aldrich and Rohde, "The Transition to Republican Rule in the House," 550.

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dependently of the party leadership.[57] The speaker's chief of staff noted that the committee appointments were one part of a larger effort to transform the House: "The benefits of ignoring seniority, eliminating some committees, cutting back on staff, jumping over the more senior members, giving some freshmen subcommittee chairmanships; that was all part of changing the culture of the House."[58]

Thus, while the short-term conditions after the 1994 elections would likely have provided any leader an opportunity to exercise strong leadership in organizing the House, those conditions offer an insufficient explanation for why Gingrich acted as he did. The speaker could have met expectations for strong leadership by means of a more inclusive decision-making process and without unilaterally deciding to skip down the seniority ladder in appointing committee chairs. A more conventional, risk-averse politician with less ambitious goals might have done just that. But Gingrich was neither a conventional politician nor one with modest ambitions for himself, his party, or the House of Representatives.

Committing House Republicans to Balance the Budget Within Seven Years

Another prominent example of Speaker Gingrich's acting ahead of any clear expression of members' preferences in an effort to shape those preferences in a direction consistent with his own was the decision to commit the party to passing a budget resolution that would balance the budget within seven years. The Contract had called for a balanced budget amendment to the Constitution, but did not specify how or when the budget would be balanced. Although some in the House Republican conference were strongly committed to the goal of enacting a balanced budget, there was no consensus among the members on this issue. To explain this highly consequential decision, we must go beyond followers' expectations to Newt Gingrich's own goal of advancing a balanced budget. As we have seen, the goal of committing to a balanced budget within a specific, relatively short time frame was closely linked to his larger, transformative political agenda.

Gingrich restated his commitment to balancing the budget in his very first speech to the Republican conference after being nominated for the speakership: ". . . we have to have a dialogue about the budget because the budget is the transformational document for this system. When you've changed the budget, you've really changed government, and until you change the budget, you've just talked about changing government."[59] In a March 1995 interview,

[57] On Gingrich's alignment with the "party activists" against the "committee guys" in the House Republican party prior to 1994, see Connelly and Pitney, *Congress Permanent Minority?* 20, 24–26.

[58] Meyer, interview.

[59] "Taking Speaker's Mantle, Gingrich Vows 'Profound Transformation,'" *Congressional Quarterly Almanac*, 1994, 57D.

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he reiterated this point: "I regard getting to the balanced budget as the fulcrum to move the whole system. It's the only thing that gives you the moral imperative to change the whole structure of the welfare state."[60]

In mid-February 1995, while the news media were focused on the rapid-fire progression of House votes on Contract bills, Gingrich announced to the press that House Republicans would introduce a budget later in the year that would be in balance by 2002 and that only budget proposals that met the same timetable would be in order on the House floor. Up until that time, House Republican leaders—including Budget Committee Chair John Kasich (R-OH), one of the most committed deficit hawks in the party—understood the goal in formulating a budget to involve enacting sufficient spending reductions to offset the Contract tax cuts and make a "down payment" and establish a "glide path" toward budget balance at some unspecified future date. Kasich reportedly considered the less ambitious "glide path" strategy difficult, but "doable." He did not accept the view that it was politically feasible for Republicans to enact the tax cuts and defense spending increases set forth in the Contract and still commit to a date certain for balancing the budget.[61]

After weeks of work on a budget intended to fit the "glide path" scenario, Gingrich personally took the initiative to move the goal to budget balance within seven years. In a 15 February 1995 meeting with Kasich and other House GOP leaders, Gingrich announced, "We are going to zero in seven years." Kasich replied, "I don't know that we can get the numbers together to make it credible." Gingrich then called for an informal show of hands, and all but Kasich supported the proposal. "Motion carries," Gingrich reportedly announced. "You're outvoted, John. We're going to zero."[62] Before undertaking any further consultation with Republican members, the speaker announced the balanced budget commitment to the press the following morning.[63]

As one leadership staffer described the abrupt shift in budget strategy that occurred early in 1995: "It was Newt way out there on his own. The Senate had not bought into this yet. All he had was almost a flip vote in the House leadership the day before—it wasn't like there was a big deliberate discussion of the question—but he announced the policy publicly the next day so that nobody could back away from it."[64] Referring to the seven-year balanced budget commitment, Gingrich's floor assistant stated: "It was his idea totally. It was clearly

[60] Quoted in Dick Williams, *Newt! Leader of the Second American Revolution* (Marietta, GA: Longstreet Press, 1995), 211.

[61] Drew, *Showdown*, 127–128; Helen Dewar, "Republicans Face the Bitter Truth; Divisions, Democratic Defiance Complicate Already Arduous Agenda," *Washington Post*, 23 January, 1995.

[62] George Hager and Eric Pianin, *Mirage: Why Neither Democrats Nor Republicans Can Balance the Budget, End the Deficit, and Satisfy the Public* (New York: Random House, 1997), 18–19; see also David Maraniss and Michael Weisskopf, *Tell Newt to Shut Up!* (New York: Simon and Schuster, 1996), 37–38. This account was confirmed in the Meyer, Hellman, and Swinehart interviews.

[63] "Details Promised With Budget," *Washington Post*, 16 February 1995.

[64] Drew, *Showdown*, 128–129.

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top down. It was his sole decision."[65] The speaker's chief of staff characterized the balanced budget decision as an example of Gingrich's broader understanding of leadership: "Newt just did it. He just announced it. Which was his operating style. His view was that . . . the job of a CEO is to move the goalposts and force the institution to accommodate that, because otherwise everybody would tell you why it can't be done. So that was intentional on his part. . . ."[66]

Though Gingrich drew strong support for balancing the budget from members of the large Republican freshman class,[67] there is no evidence that he consulted them or anyone else before establishing the balanced budget goal by means of an impromptu show of hands among a small group of Republican leaders. And at the time that Gingrich made the commitment public, the prospects of enacting a balanced budget were far from certain. Several senior Republican committee chairs whose expertise was needed to develop a balanced budget had already publicly expressed ambivalence about policy changes that would be required to reach this goal.[68] As one Republican leadership staffer at the time described the political situation:

> We were all for a balanced budget amendment. Being for a constitutional amendment to balance the budget is pretty easy. It polls well and all that. But . . . he [Gingrich] made the decision that we're going to *actually* balance the budget which means that we're going to have to make all these cuts and do all of these things. Now no one, when they did the Contract with America, had bought into that; that we would actually make the spending cuts and hit balance.[69]

Budget Committee Chair Kasich commented in late February 1995: "There have been countless meetings with countless discussions. I try to let them know the enormity of the situation. I have my doubts about whether they're [fellow Republicans] going to come through or not. I don't know yet."[70] Yet, after weeks of bargaining among Republicans, the House voted 238–193 to pass the budget resolution on 18 May.[71] Eight Democrats joined all but one Republican in voting in favor of the budget resolution, which included the seven-year balanced budget goal to which the speaker had committed House Republicans in February. There is no evidence that his followers were in agreement on pursuing the more ambitious budgetary goal early in 1995 or that they had even

[65] Swinehart, interview.

[66] Meyer, interview.

[67] Nicol C. Rae, *Conservative Reformers: The Republican Freshmen and the Lessons of the 104th Congress* (Armonk, NY: M.E. Sharpe, 1998), 76, 93–94, 100, 206; see also Fenno, *Learning to Govern*, 41–44.

[68] Art Pine, "GOP's Defense Plans are at War with Budget Goals," *Los Angeles Times*, 20 January 1995; Ceci Connolly, "Clay, Shaw, Bilirakis Anxious Over Cuts to Defense, Medicare," *St. Petersburg Times*, 20 January 1995.

[69] Hellman, interview.

[70] Drew, *Showdown*, 129.

[71] For examples of the intra-party bargaining involved, see David Maraniss and Michael Weisskopf, "Aggies and the Road Gang Crunch the Numbers," *Washington Post*, 26 May 1995.

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been consulted about doing so. But there is clear evidence that, long before he became speaker, Newt Gingrich had been strongly committed to advancing a balanced budget as a vehicle for transforming the direction of national governance.

Altering Members' Policy Preferences: The "Crowning Jewel" Tax Cuts

Sinclair proposes that conclusive evidence in support of theories positing independent leader effects would involve evidence "that leaders sometimes change members' preferences of ends, not just means" or that "leaders *altered* members' goals."[72] On at least one highly visible issue during the 104th Congress—the tax cuts provided for in the Contract—Speaker Gingrich did just that. Here again, the imprint of Newt Gingrich's own goals is clearly visible in his activist leadership style.

Major income tax provisions were included in two of the Contract's ten measures. The first included a $500-per-child tax credit for families with annual incomes up to $200,000, reduction of the "marriage penalty," and expanded availability of tax-sheltered IRAs. The second measure provided for reductions in capital gains taxes for individuals and corporations, more favorable tax treatment of capital investment by large and small businesses, and reductions in estate taxes. The Ways and Means Committee reported out these tax provisions with only minor modifications on 14 March 1995. Then, just as the Republicans were coming close to delivering on their promise to vote on all of the Contract measures within one hundred days, the provision allowing the $500-per-child tax credit to go to families with incomes up to the income cap of $200,000 became one of the most divisive issues of the entire early period of the 104th Congress. As Gingrich put it later in 1995: "For the last three weeks of the Contract, the big issue became whether the Republicans would cave in to class-warfare rhetoric and set a lower cap. This was a much bigger issue than it appeared."[73] First, Majority Leader Dick Armey had to intervene to quell a move by Ways and Means Republicans to scale back the tax cut by reducing the income cap. Then, before the bill could be brought to the House floor, 102 House Republicans (including ten committee chairs) signed a letter requesting that the leadership allow a vote on an amendment to reduce the cap from $200,000 to $95,000. At one point, Speaker Gingrich conceded that he was not sure the larger tax cut could pass the House.[74]

[72] Sinclair, "Transformational Leader or Faithful Agent?" 424 (emphasis in original).

[73] Gingrich, *To Renew America*, 135.

[74] See Alissa J. Rubin, "Unity Frays Within House GOP over Family Tax Credit," *Congressional Quarterly Weekly Report*, 25 March 1995, 857–859; "GOP Leaders Ready to Deal on Troubled Tax-Cuts Bill," *Congressional Quarterly Weekly Report*, 1 April 1995, 927–930; and Gimpel, *Fulfilling the Contract*, 108.

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Yet, instead of responding to the request from almost half the Republican conference for an opportunity to vote on a smaller tax cut, Gingrich publicly declared the tax bill (with the higher income cap) the "crowning jewel" of the Contract, in effect forcing almost half of his Republican followers to choose between accepting the objectionable $200,000 cap or repudiating their own party's position on tax cuts on the final major vote of the first one hundred days. As the speaker explained to reporters, "You're now going to go to these guys and say, 'On final passage, why don't you kill the piece de resistance of the entire *Contract* so you can go home on the 7th of April and have every Republican in your district ask you if you've lost your mind.'"[75] Gingrich's strategy worked; both the rule and the bill passed the House on 5 April, with only eleven Republicans voting no. Greg Ganske (R-IA) and Pat Roberts (R-KN), two of the leaders of the effort within the conference to lower the income cap, voted in favor.

Gingrich's leadership on the Contract tax cuts provides an important example of a highly activist leadership style in which the leader at times acted independently to influence the policy goals of his followers. This was not a case of a leader aggressively wielding leadership tools to devise a means of advancing some policy goal on which his followers were in agreement. The speaker refused to bend on the issue of allowing a vote on reducing the income cap for the child tax credit, despite clear signals that almost half the Republican conference favored such a move. The 1995 tax bill represents a case in which the speaker was able to persuade a large bloc of Republican members to change their policy goals, or at least change the policy outcome for which they were willing to vote, which is what matters in congressional politics. As Henry Hyde (R-IL), one of the committee chairs who had opposed maintaining the $200,000 cap, explained: "At times like these, many of us subordinate our preferences to the greater good of the team."[76] In the face of a sharp split in the Republican conference over how large a tax cut was best for the "team," Speaker Gingrich used the power of his office to orchestrate an outcome consistent with his own longstanding personal goal of associating the Republican party with big tax cuts.

The "Anti-Newt": Denny Hastert's Leadership Style

A comparison of the leadership styles of Gingrich and his successor, J. Dennis "Denny" Hastert (R-IL), offers a final source of evidence on individual leader effects on leadership style. The difference in leadership styles is striking, certainly greater than would be expected from two House speakers operating under roughly similar contextual conditions. Although we cannot undertake here a detailed examination of the full range of factors that have shaped Speaker

[75] Eric Pianin, "Domenici to Attack Deficit and Ignore GOP Tax Cut; Decision Complicates Republican Program," *Washington Post*, 29 March 1995.

[76] Alissa J. Rubin, "Finishing the 'Contract' in Style, House Passes Tax-Cut Bill," *Congressional Quarterly Weekly Report*, 8 April 1995, 1014.

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Hastert's leadership style, there is considerable evidence to suggest that individual leader goals should be part of the explanation for the shift. In addition, leader effects of another type may also be important in explaining this change; Newt Gingrich may have been instrumental, not only in shaping the initial context for his own leadership, but also in helping to create the conditions that defined effective leadership for his successor.

Though Hastert is not a "weak" speaker, his leadership style involves less centralization of authority in the hands of the speaker and greater emphasis on traditional functions of party leadership: attending to organizational matters, resolving intra-party conflicts, coalition building, and party maintenance. He carries out these functions differently than Gingrich and is much less engaged in agenda setting, policy formation, and public communications than was his predecessor. For example, when the term limits imposed during the 104th Congress made it necessary to appoint new chairs of most standing committees at the beginning of the 107th, rather than personally select those he considered most capable of advancing the party's agenda, Hastert instituted a new, more participatory selection process. Aspiring chairs made presentations to the Republican Steering Committee; then the speaker kept a low profile and allowed the party committee to work its will.[77]

Hastert also made it clear from the beginning of his speakership that standing committees would play a larger role in developing legislation.[78] As one of the speaker's senior aides explained, "Denny thinks about how committees work. . . . He really did rise up through the committee process. He knew you had to work through the system and you had to trust the prerogatives of the committees."[79] Added a staff member from the majority whip's office, "Under Denny there is less overturning of committee products, less short-circuiting of committees. He uses the committee system to process issues."[80] When asked to contrast the two speakers, former Appropriations Committee Chair Robert Livingston (R-LA) emphasized that Hastert's style is more consultative: "Denny really does consult with people and get their input. . . . Denny leads the conference and is governed by consensus in the conference, but Newt *directed* the conference."[81] Regarding the public side of the speakership, Hastert has been virtually invisible outside of Washington. Polling data have consistently shown that most voters know too little about him to judge him favorably or unfavorably.[82] Throughout the last two years of the Clinton administration and during

[77] Richard E. Cohen, "Hastert's Hidden Hand," *National Journal*, 20 January 2001.

[78] See Jackie Koszczuk, "Hastert Gently Gavels in An Era of 'Order' in the House," *CQ Weekly*, 27 February 1999.

[79] Hellman, interview.

[80] Anonymous Republican leadership staff person, interview with Daniel J. Palazzolo and Randall Strahan, 11 July 2002.

[81] Livingston, interview.

[82] See Jackie Koszczuk, "Master of the Mechanics Has kept the House Running," *CQ Weekly*, 11 December 1999; and Mark Leibovich, "Speak No Drivel," *Washington Post*, 29 July 2002.

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his time as speaker under President George W. Bush, Hastert has focused on managing the legislative process, consulting widely with Republican members, and protecting a narrow Republican majority by building a record of legislative achievement rather than engaging in conflict with the other party.

If Hastert's leadership style, by all accounts, is marked by somewhat less centralization, greater deference to standing committees, more consultation prior to making decisions, more focus on managing the day-to-day legislative process, and less interest in serving as a national party spokesperson or in defining the party's message through conflict with the opposing party, how do we explain these differences? According to context-only theory, we should expect large, sustained differences in leadership style to follow from similarly large changes in contextual conditions that altered the costs and benefits to members. Yet, from the 104th and 105th to the 106th and later Congresses, the House does not appear to have undergone dramatic changes in the key contextual variables associated with explaining changes in leadership activity within this theory. Both speakers had similar institutional powers at their disposal; both operated for some time under a divided government situation; and, perhaps, most importantly, there has been no decline in ideological homogeneity among members of the majority party, the factor that has been cited as the most important long-term condition tending to produce strong, activist leadership.[83] Nor has there been any real narrowing of ideological differences between the two parties. As Smith and Gamm point out, the shift to Hastert's very different leadership style "occurred without a measurable change in party polarization."[84] In fact, by the most commonly used measures of members' policy preferences (NOMINATE coordinates), Republican party unity in the first Congress that Hastert served as speaker, the 106th (1999–2000), was virtually identical to that of the 104th Congress, when Gingrich was at the height of his power. Nor by these measures did the level of ideological divergence between the two parties undergo any significant change.[85]

Interviews with House members and leadership staff confirm the differences in the two speakers' leadership styles and highlight as well differences in the two leaders' personal goals and orientation toward leadership. As one Republican member who served on the Rules Committee under both leaders commented:

[83] Sinclair, *Legislators, Leaders, and Lawmaking*, 50, 55–57.

[84] Smith and Gamm, "Dynamics of Party Government in Congress," 262.

[85] The standard deviations for House Republicans's 1st dimension DW NOMINATE scores for the 104th, 105th, and 106th Congresses were .158, .153, and .158, respectively. The absolute distances between the two parties' median scores for these same Congresses were .863, .867, and .862. NOMINATE coordinates are estimates of members' locations on a left-right scale from +1 to −1 based on analysis of roll call voting patterns. For more information, see Keith T. Poole and Howard Rosenthal, *Congress: A Political-Economic History of Roll-Call Voting* (New York: Oxford University Press, 1997). Source: Keith Poole. http: voteview.uh.edu/default_nomdata.htm. For historical comparisons using these same measures, see Smith and Gamm, "Dynamics of Party Government in Congress."

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> Newt was a visionary. Denny is a mechanic. Denny's view of the job is to move the House forward and get the bills passed. Newt was trying to change the world. . . . Newt tried to control the whole process. Denny gives the [committee] chairmen a lot more freedom.[86]

A member of the freshmen class of 1994 who served in the Republican whip organization under both speakers stated:

> Newt wanted to be three things at once and Denny wants to be one thing. Newt wanted to be philosophical leader of the Republican party, he wanted to be a candidate for president, and he wanted to be speaker of the House. Denny wants to be speaker of the House. He wants to be the engineer. He wants to run the railroad.[87]

A Hastert staffer who had also worked in the Republican leadership during the Gingrich years observed:

> Newt was trying to change an institution. Trying to change the way the House did its business. He was also trying to change how the speaker was perceived nationally. . . . I think Denny in one sense was trying to consolidate the gains that Gingrich made. But he was also trying to return the speakership to its more traditional role, which was speaker of the House not speaker of the *country*. . . . Denny was a high school teacher and a coach. He has no special belief that he is exceptionally brilliant. So he brings a humility to the job. . . . And he thinks the key to success is when you listen to everybody you are in a much stronger position.[88]

Finally, a former senior Gingrich staff person who also worked closely with Hastert before he became speaker contrasted the two leaders as follows:

> Newt had a world view . . . a view of the speakership to drive, shape public policy. . . . Denny wasn't going to be the face of the party. He's not comfortable in that role. Denny is a great floor politician . . . much more of a floor guy. He understands and listens to the rank and file.[89]

Smith and Gamm have proposed that the one major contextual shift that may help explain this change in leadership styles was House Republicans' increasingly precarious electoral situation after losing seats in both the 1996 and 1998 elections. In this view, both the narrower party majority and concerns about voters' negative perceptions of strident Republican partisanship may have altered members' expectations of their leaders.[90] Interviews with members and staff confirm that House Republicans were seeking a different type of leadership after 1998. But even here there is evidence of leader effects in that members' expectations were defined in part by reactions *against* Newt Gingrich's unusually activist leadership style.

[86] Anonymous Republican House member, interview with Daniel J. Palazzolo and Randall Strahan, 10 July 2002.

[87] Robert L. Ehlich, interview with Daniel J. Palazzolo and Randall Strahan, 10 July 2002.

[88] John Feehery, interview with Daniel J. Palazzolo and Randall Strahan, 12 July 2002.

[89] Ed Kutler, interview with Randall Strahan, 12 July 2002.

[90] Smith and Gamm, "Dynamics of Party Government in Congress," 262–263.

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For example, when asked why Republicans had chosen Hastert as speaker, Republican Robert Ehrlich of Maryland responded: ". . . it *had* to be Denny. . . . He is the anti-Newt." Ehrlich added that Gingrich was a "polarizing politician," and after the Democrats engaged in a "demonization campaign" against him, the members "wanted calm. They wanted somebody who wanted one job not three, they wanted someone who could not be demonized by the Democrats."[91]

Thus, a preliminary comparison of the Gingrich and Hastert speakerships also appears to confirm the importance of incorporating individual leader effects in theories of congressional leadership. While there are notable differences in leadership style across these two speakerships, these differences do not appear to be very well explained by the variables emphasized in the contextual theory. Differences in the two leaders' goals and the conditions created by members' reactions against Gingrich's highly activist leadership style also appear to be important for explaining why Hastert employs such a different style in leading the House.[92] Having considered a variety of types of evidence that show how the politics of the Gingrich speakership provide support for an explanation of congressional leadership that incorporates leader effects, we turn now to the question of how well this case fits within principal-agent theory.

Principal-Agent Theory and Legislative Leadership

While the evidence presented above calls into question the adequacy of the context-only theory, we do not contend that the presence of significant leader effects in the politics of the Gingrich speakership, or in congressional leadership politics more generally, necessarily conflicts with the logic of principal-agent theory. The problem, in our view, lies in the ways that principal-agent theory has been applied by most legislative scholars: either in a way that assumes principals can always retain strict control over their agents, or in ways that assume all agents will have such similar goals that they are essentially interchangeable.

Sinclair's theory illustrates the first problem. Although she characterizes her context-only leadership theory as a principal-agent theory, this particular interpretation of agency theory actually appears somewhat idiosyncratic in suggesting that principals can always maintain strict control of their agents and that agents never have the motivation or opportunity to act independently of principals' expectations or preferences. Other scholars have interpreted principal-agent theory to imply that individual agents often retain significant leeway from control by principals and should be expected to use that leeway to advance

[91] Ehrlich, interview.

[92] Ironically, after his presumed successor, Robert Livingston, announced his intention to resign from the House, Gingrich himself told the Republican conference that Hastert "had" to be the next speaker. Gingrich and Ehrlich, interviews.

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their own goals or interests rather than always taking their bearings from their principals.

D. Roderick Kiewiet and Mathew McCubbins, for example, point out that in economic theories, control of agents by principals is always less than perfect and that the leeway enjoyed by agents (agency loss) can be even greater in situations—such as that in the U.S. House—involving collective or multiple principals.[93] While legislative principals can exert control over their agents through careful selection and institutional checks, Kiewiet and McCubbins emphasize that legislative leaders retain significant strategic and informational advantages in relation to followers, including the ability under some conditions to use agenda powers to manipulate decision-making processes.[94]

However, while other interpretations of principal-agent theory diverge from Sinclair's view that followers can always achieve strict control over leaders, most concur in viewing individual leader characteristics as mostly irrelevant to theoretical explanations of legislative leadership. These theories generally posit that agents have sufficiently similar motivations (usually office-holding ambition) that all will respond in a like manner to a given set of incentives or conditions.[95] The Gingrich case illustrates the potential problems with building highly deterministic leadership theories on this type of simplifying assumption. Such theories will have limited explanatory power if leaders have multiple goals and if, for some leaders, policy or other types of goals are at least as important as the goal of retaining elective positions.

More than a decade before he became speaker, Newt Gingrich offered the following account of his own motives to a journalist: "I have an enormous personal ambition. I want to shift the entire planet."[96] We are not proposing that the Gingrich effect operated on this scale, but there is simply a great deal of evidence that Newt Gingrich was up to a lot more than simply trying to do whatever would get him elected and re-elected speaker. Some leaders undoubtedly are motivated primarily by the goal of maintaining a hold on their leadership positions, but others may be interested in pursuing much broader or more ambitious personal or political goals. The former are likely to be more risk averse

[93] D. Roderick Kiewiet and Mathew D. McCubbins, *The Logic of Delegation* (Chicago: University of Chicago Press, 1991), 24–27.

[94] Ibid., 48–55.

[95] See for example, Morris P. Fiorina and Kenneth A. Shepsle, "Formal Theories of Leadership: Agents, Agenda Setters, and Entrepreneurs" in Bryan Jones, ed., *Leadership and Politics: New Perspectives in Political Science* (Lawrence: University of Kansas Press, 1989), 20–21, 36; and Cox and McCubbins, *Legislative Leviathan*, 125–134. Rohde's analysis of House leadership, which also conceptualizes leaders as agents, is an important exception to this mode of theorizing. Rohde proposes that the "personal dimension" can be important for explaining leadership style "when the context is tolerant regarding the exercise of power." Under these conditions, "more aggressive and enthusiastic leaders will likely exhibit substantially more activist behavior than will leaders who are reluctant about the exercise of their powers." Rohde, *Parties and Leaders in the Postreform House*, 184, 172.

[96] Lois Romano, "Newt Gingrich, Maverick on the Hill: The New Right's Abrasive Point Man Talks of Changing His Tone and Tactics," *Washington Post*, 3 January 1985.

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and reactive to contextual conditions, the latter more risk tolerant and prone to act independently in an effort to shape those conditions. Given the strategic position of a leader such as the speaker of the U.S. House, these personal differences can have important consequences for leadership behavior and style as well as for institutional development and policy outcomes.[97]

The Gingrich Effect and Theories of Congressional Leadership

The evidence of individual leader effects in the politics of the Gingrich speakership illustrates the limitations of context-only theory and the importance of incorporating both contextual and individual factors in explanations of congressional leadership. To be sure, studies focusing on contextual factors, including those by Barbara Sinclair, have contributed greatly to our understanding of congressional leadership. A focus on context can illuminate the conditions that permit the greatest opportunities for strong leadership[98] and the limitations on leadership in a legislative body.[99] Contextual analyses also help to explain why different types of leadership styles have emerged in the House during different eras in its development[100] as well as the re-emergence of strong leadership in recent decades.[101] But contextual factors alone cannot explain leadership politics in the House of Representatives during the Gingrich speakership. Causal effects were also present from Newt Gingrich's own goals and view of leadership.

We conclude with three observations regarding the lessons of this case for theories of congressional leadership. First, in contrast to the context-only theory, which assumes that leaders must—and always do—respond to the expectations of the members, the individual leader effects present in the Gingrich case show that congressional leaders can—and sometimes do—act independently of contextual conditions and members' expectations and they sometimes succeed in shaping those conditions and expectations in a direction consistent with their own goals. Of course, in developing a theory of congressional leadership it is important to ask how frequently other House speakers have attempted to shape contextual conditions and the expectations of their followers. Addressing this larger question is beyond the scope of this article, but we are confident that at least several other speakers have engaged in this mode of leadership at criti-

[97] On the importance of individual leaders' entrepreneurial activity for explaining the institutional development of the House, see Eric Schickler, *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress* (Princeton, NJ: Princeton University Press, 2001).

[98] Rohde, *Parties and Leaders in the Postreform House.*

[99] Charles O. Jones, "Joseph G. Cannon and Howard W. Smith: An Essay on the Limits of Leadership in the House of Representatives," *Journal of Politics* 30 (August 1968): 617–646.

[100] Cooper and Brady, "Institutional Context and Leadership Style."

[101] Roger Davidson, *The Postreform Congress* (New York: St. Martin's Press 1992); Rohde, *Parties and Leaders in the Postreform House*; Sinclair, "The Emergence of Strong Party Leadership in the 1980s House of Representatives"; Sinclair, *Legislators, Leaders, and Lawmaking.*

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cal moments in the development of the House and that more research into how and when leaders act in this more independent mode is worth pursuing.[102]

Second, the comparison of Speakers Gingrich and Hastert suggests that a theory incorporating both contextual and individual leader effects may provide a more complete explanation of leadership style. Such an approach goes beyond suggesting that individual leaders matter in House politics to specifying the ways in which leaders matter. We believe that studies of leadership style will benefit from an exploration of how leaders' goals differ and how these differing goals affect their responses to contextual conditions. Individual leader goals and orientation toward leadership may be especially important for understanding changes in leadership style when the most potent contextual variables, such as the degree of homogeneity among followers' preferences, remain relatively stable.

Finally, the evidence from the Gingrich speakership and from the Gingrich-Hastert comparison suggests that there is sufficient leeway in the leader-follower relationship and sufficient variation in leaders' goals to raise serious questions about the explanatory power of leadership theories that view individual leaders as essentially interchangeable. Here, we concur with Mayhew's view that political scientists may be going too far in the direction of "depersonalizing" congressional politics.[103] Mayhew observes that the notion that actions of individual politicians are consequential "may seem an obvious idea to emphasize in studying congressional politics, but it is a recessive one in contemporary political science . . . [where] public officials are routinely cast as agents or instruments of societal interests or preferences. . . ."[104] With respect to Newt Gingrich, he contends, "We have as good a case as we are likely to see of a member of Congress operating in the public sphere with consequence."[105] We agree and believe that theories of congressional leadership should incorporate the variation in leaders' goals that can produce these important leader effects. The result may be a more complex theory, but our theories should reflect the complexity of the leadership politics we are trying to explain.*

[102] See Randall Strahan, "Leadership and Institutional Change in the Nineteenth Century House" in David W. Brady and Mathew D. McCubbins, eds., *Party, Process, and Political Change in Congress: New Perspectives on the History of Congress* (Stanford, CA: Stanford University Press, 2002).

[103] Mayhew, *America's Congress*, 212.

[104] Ibid., x.

[105] Ibid., ix.

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Global Security and Legal Restraint: Reconsidering War Powers after September 11

KARL K. SCHONBERG

In no part of the Constitution is more wisdom to be found, than in the clause which confides the question of peace and war to the legislature, and not to the executive branch.
—James Madison[1]

The United States Constitution mandates a sharp division of the authority to make war between the Congress and the president, but in the contemporary global order, in which technology and new institutional arrangements have fundamentally altered the pace of world politics and the very nature of power itself, this divided authority is not functioning as intended.

The most telling recent example of this fact occurred only days after September 11, when both houses of Congress overwhelmingly authorized the president to use force against not only those who had attacked the United States but also against individuals who had helped or harbored them, groups with similar ideologies, and those who might be planning such activities for the future. The resolution passed by Congress ceded to the president the right to decide who these enemies were and how the war would be conducted, without any limitation in time or geographic scope. A little more than a year later, Congress authorized the president to conduct a war to topple the government of Iraq in similarly vague terms.

These new wars represent the latest in a decades-long series of steps away from the constitutional balance of war-making powers. While the Tonkin Gulf Resolution remains the most important symbol of this trend, more recent uses of force may be just as significant, since they have shown that it will continue even absent the Cold War.

[1] James Madison in Gaillard Hunt, ed., *The Writing of James Madison*, Vol. 6 (New York: G.P. Putnam's Sons, 1906), 174.

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The tension between democratic governance and the demands of the new global order is apparent in the erosion of this core aspect of the original constitutional balance. This article will examine the historical roots of the current, dysfunctional war-making regime and suggest that the contemporary era requires its reconsideration in favor of alternatives that are militarily practical and politically realistic, but also constitutionally valid.

Declaration of the "War" on Terrorism

On Friday 14 September 2001, just three days after the attacks that destroyed the World Trade Center, damaged the Pentagon, and killed some 3,000 people, both houses of Congress voted to authorize the president to use military force against the perpetrators and those who would threaten such attacks in the future. The brief resolution they passed gave the president wide latitude to

> use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.[2]

The president was, thus, given the freedom to determine who had been responsible for the attacks and to define what constituted the "necessary and appropriate" actions to be taken against them. Those who authorized, aided, or harbored the terrorists were expressly included in his mandate, and no limitation to hostilities in duration or geographic scope was imposed.

Arguably, President George W. Bush did not need specific congressional authorization to use military force in response to the September 11 attacks. The authority to repel sudden attacks has long been understood to be a discretionary power of the president and is explicitly described in the 1973 War Powers Resolution (WPR) as well. In these cases, some commentators have argued that since the president's authority is operative "in an emergency," it is not limited by the WPR's sixty-day time limit, but only by the duration of the emergency.[3] It seems very unlikely, however, that either the Framers of the Constitution or the authors of the WPR would have presumed that the right of self-defense extended to the prosecution of a war half a world away, in response to attacks carried out months earlier by nonstate actors.

The political climate after September 11 was an extraordinary one in which Americans were overwhelmingly ready to engage in military action as dictated by the White House. Polls taken on 13 September found between 66 and 81

[2] P.L. 107–140; 115 Stat. 224 (2001).

[3] For example, see Robert J. Delahunty and John C. Yoo, "The President's Constitutional Authority to Conduct Military Operations against Terrorist Organizations and the Nations that Harbor or Support Them," *Harvard Journal of Law and Public Policy* 25 (Spring 2002): 489–490.

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percent of Americans willing to "declare war" in response to the attacks, and on the same day, nine members of Congress announced their willingness to back a formal declaration of war.[4]

The administration's request for authority was equally extraordinary, even given the grave circumstances in which it was made, and the very broad resolution passed by Congress provided much less than the White House initially asked for. The administration's first proposal would have given the president authority "to deter and pre-empt any future acts of terrorism or aggression against the United States," a mandate which Democratic Chief Counsel to the House Committee on International Relations David Abramowitz has called "incredibly broad" and "breathtaking."[5] In Abramowitz's view, this language (which was eventually moved from the authorizing to the precatory clauses of the bill),

> would have authorized the President to use force not only against the perpetrators of the September 11 attacks, but also against (at least arguably) anyone who might be considering future acts of terrorism, as well as against any nation that was planning "aggression" against the United States. . . . [The] President might never again have had to seek congressional authorization for the use of force to combat terrorism.[6]

The White House also requested that Congress appropriate money at the president's discretion to remain available until it was spent, grant him authority to waive restrictions on foreign assistance without notifying Congress, and give him the prerogative to restrict the access of congressional oversight committees to sensitive law enforcement information–though these requests were all denied. Historically, declarations of war have also named the specific states against which the United States has taken up arms, defining clear limits on the scale of conflict. After September 11, the President's demand for immediate authorization of force made it politically impossible to be certain who was responsible for the attacks before deciding whether a military response was appropriate.[7]

The Senate debated the measure only briefly; discussion in the House was more extensive, but very few legislators in either chamber (and none of the leaders of either party) offered criticism or expressed concern over any aspect of the legislation in their floor statements.[8] The resolution was ultimately passed by overwhelming majorities in both houses: the Senate voted 98–0 in

[4] Robert Turner, "The War on Terrorism and the Modern Relevance of the Congressional Power to 'Declare War,'" *Harvard Journal of Law and Public Policy* 25 (Spring 2002): 519.

[5] David Abramowitz, "The President, the Congress, and Use of Force: Legal and Political Considerations in Authorizing Use of Force against International Terrorism," *Harvard International Law Journal* 43 (Winter 2002): 72.

[6] Ibid., 74–75.

[7] Ibid., 73–75.

[8] Congressional Record, 107th Cong., 1st sess., 14 September 2001, 147, H5638; S. J. Res. 23.

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favor, and the House passed the measure by a margin of 420–1. The sole dissenting vote was cast by Democratic Representative Barbara Lee of California, who said that she was "convinced that military action will not prevent further acts of international terrorism against the United States" and felt obliged to "urge the use of restraint." "Let us just pause for a minute," Lee argued, "and think through the implications of our actions today so that this does not spiral out of control."[9]

No amendments to the resolution were offered on the floor of either chamber, though in the drafting process some legislators and congressional staffers had advocated changes limiting the authority it granted. Among them were proposals requiring the president to certify that those against whom force would be used were actually tied to the September 11 attacks, to confirm that the United States had used all means short of force to bring terrorists to justice, and to report to Congress every sixty days, paralleling the War Powers Resolution.[10] Any of these restrictions would have meaningfully limited the president's liberty to prosecute the war on terrorism strictly at his own discretion, but none was enacted.

In the eighteen months following the resolution's passage, the U.S. military engaged in major combat operations in Afghanistan and later Iraq, toppling the governments of those states. In 2002, American troops were also dispatched to Georgia and the Philippines, to serve as antiterrorist military advisors. In the Philippines, in early 2003, U.S. Special Forces and Marines were deployed with orders to conduct offensive combat operations as well.[11]

Authorization of the Second Persian Gulf War

A year after the September 11 attacks, the Bush administration was once again preparing for war, this time in Iraq. In the summer of 2002, the administration publicly made the case that no congressional approval was needed for this prospective war because, in the view of White House Counsel Alberto R. Gonzalez, the president already had sufficient legal authority without it.[12] This authority, Gonzalez argued, derived from three sources: the president's constitutional role as Commander in Chief; the 1991 congressional resolution authorizing the Persian Gulf war; and the resolution authorizing force in response to the September 11 attacks.[13]

[9] Congressional Record, 107th Cong., 1st sess., 14 September 2001, 147, H5643.

[10] Abramowitz, "The President, the Congress, and Use of Force," 75.

[11] Eric Schmitt, "U.S. Combat Force of 1,700 Is Headed to the Philippines," *New York Times*, 21 February 2003.

[12] Richard A. Oppel and Julia Preston, "Administration Seeking to Build Support in Congress on Iraq Issue," *New York Times*, 20 August 2002.

[13] Neil A. Lewis and David E. Sanger, "Bush May Request Congress's Backing on Iraq, Aides Say," *New York Times*, 29 August 2002.

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Administration officials noted that the 1991 resolution was still being applied on a regular basis to the enforcement of no-fly zones over Iraq and that it allowed for the use of force to establish "peace and stability," but many critics felt these claims distorted the original intent of the bill beyond recognition. Anne-Marie Slaughter, Dean of the School of Public and International Affairs at Princeton University, called the argument that Congress in 1991 had authorized a full-scale war twelve years later "an enormous stretch . . . [that] would completely contravene the spirit of the resolution and the underlying constitutional values at stake."[14] Bruce Fein, a constitutional scholar and former Associate Attorney General in the Reagan administration, suggested that "Abraham Lincoln and Franklin Roosevelt never claimed war powers close to what Bush is claiming."[15]

In the end, the administration did concede that a formal vote in Congress would be politically useful, but congressional consideration of the issue occurred in an atmosphere dominated by the looming midterm elections, which took place less than a month after the votes on the war resolution. With the President enjoying high public approval ratings and the nation's memories of September 11 still fresh, criticism of the measure in Congress was muted. The White House manipulated the timing of the votes in the hope of compelling a quick and decisive outcome, working to place the measure on the legislative docket as late as possible before election day.[16]

The congressional vote authorizing a new war in Iraq was lopsided; on 10 October 2002, an identically worded resolution was approved by a margin of 77–23 in the Senate and 296–123 in the House. In both houses, Republicans were united in their support for the resolution, but Democrats were split. In the Senate, Democrats voted in support of the bill by a margin of 29–21, and Republicans by 48–1. In the House, 81 Democrats voted in favor and 126 against; 215 Republicans voted in support and 6 against. The resolution they approved stated that the president was "authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate to (1) defend the national security of the United States against the continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council Resolutions regarding Iraq."[17]

The president was required to report to Congress within forty-eight hours of exercising the authority granted to him and to certify that "reliance on diplomatic or peaceful means alone either (A) will not adequately protect the national security of the United States against the continuing threat posed by Iraq or (B) is not likely to lead to enforcement of all relevant United Nations Secu-

[14] Ibid.

[15] Quoted in Mike Allen and Juliet Eilperin, "Bush Aides Say Iraq War Needs No Hill Vote; Some See Such Support as Politically Helpful," *Washington Post*, 26 August 2002.

[16] Douglas Turner, "Congress Backs Bush on Iraq; Sweeping War Powers Bill Passes in Bipartisan Vote," *The Buffalo News*, 11 October 2002.

[17] 116 Stat. 1498 (2002).

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rity Council resolutions regarding Iraq." In addition, the president was required to report to Congress every sixty days regarding the conduct of hostilities.[18]

No limitation was placed on the duration of the president's authority, however, which was a striking omission, given that the administration had only recently argued that a similar resolution passed nearly twelve years earlier still applied. No geographic limits were imposed on the authorization of the war either; lethal force could be used anywhere in the world, as long as it was intended to address what the president determined to be a threat to U.S. security interests with some link to Iraq. The preamble to the resolution explicitly defined the national security interests of the United States to include the restoration of international peace and stability in the entire Persian Gulf region, not just in Iraq. This clause had been moved to the preamble from the operative sections of the bill, where the administration had initially placed it, and where it would have even more strongly asserted the president's authority to carry any prospective war beyond the borders of Iraq.[19] In the words of West Virginia Senator Robert Byrd, the resolution approved by Congress "authorize[d] the president to use the military forces of this nation wherever, whenever and however he determines . . . and for as long as he determines, if he feels he can somehow make a connection to Iraq."[20]

The resolution justified the resort to force in part by suggesting that both the President and Congress were determined to act against those responsible for the September 11 attacks and by noting that Iraq was a supporter of international terrorist groups. The administration had originally included language in the resolution's preamble noting the presence of al Qaeda members in Iraq, but this clause was removed in negotiations over the draft.[21] Throughout the congressional debate over the resolution, the paucity of evidence offered by the administration to connect Iraq with September 11 was a major point of concern for its critics.

Voting against the resolution, Minority Whip Nancy Pelosi of California quoted from a declassified letter from the director of Central Intelligence to the chairman of the Senate Permanent Select Committee on Intelligence, saying that the likelihood of Iraq launching an unprovoked chemical or biological attack was low. Quick action at the expense of deliberation was, therefore, unnecessary, Pelosi argued. In her view, the central issue was "not about time. . . . It is about the Constitution. It is about this Congress asserting its right to declare war when we are fully aware of what the challenges are to us, and it is about respecting the United Nations. . . ."[22]

[18] Ibid.

[19] Ibid.

[20] Robert C. Byrd, "Congress Must Resist the Rush to War," *New York Times*, 10 October 2002.

[21] "Authorization for War: What the White House Would Like Congress to Say," *New York Times*, 27 September 2002.

[22] Congressional Record, 107th Cong., 2nd sess., 10 October 2002, 148, H7766.

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House Majority Leader Richard Gephardt agreed that "bypassing the U.N. would set a dangerous precedent" and would be "too high a price to pay." He criticized the Bush administration because its "predominant response to 9-11 has been the use of military power . . . [and] the exercise of military power is not a foreign policy." But adding that the resolution authorizing war in Iraq "is not an endorsement or an acceptance of the President's new policy of preemption," Gephardt voted to approve it nonetheless.[23]

In the Senate, Democratic Majority Leader Tom Daschle similarly acknowledged that "we are contemplating whether and under what conditions the Congress should authorize the preemptive use of American military power" and criticized "the President's desire to wage war alone, without the support of our allies and without authorization from Congress." Daschle said that "such unilateralism was not in our Nation's best interest,"[24] but, like Gephardt, he voted to support the resolution authorizing war despite these misgivings.

In both houses, a variety of amendments to the resolution were put forward attempting to limit the scope of the president's power, but none passed in either chamber. Senator Mark Dayton of Minnesota proposed urging further diplomacy before granting approval for force, but withdrew the proposal in the face of certain defeat. Dayton expressed concern that the resolution as it was passed amounted to "a pre-approval of whatever the president of the United States decides to do, whenever."[25] Other amendments proposed in the Senate would have authorized force only in response to an "imminent threat" (sponsored by Senator Dick Durbin) and limited the president's authority to make war to two years (Senator Robert Byrd). These amendments were defeated in the Senate by votes of 30–70 and 31–66, respectively.[26] In the House, proposed amendments would have required the president to work through the United Nations, authorized force only after UN approval, and recommitted the motion pending a presidential report on expected costs of war. Sponsored by Representatives Barbara Lee, John Spratt, and Dennis Kucinich, these amendments were defeated in the House by votes of 72–355, 155–270, and 101–235, respectively.[27]

The Senate rejected by a 24–75 vote an amendment offered by Democrat Carl Levin of Michigan that would have authorized the use of force only after an authorizing vote of the UN Security Council and would have required another congressional vote if the President chose to act without UN approval. Twenty-two Democrats voted in support of Levin's amendment and twenty-eight voted against, while forty-seven Republicans voted against with only one in support. Levin argued for his amendment on the basis of traditional international law, suggesting that the "Iraq resolution and the national security strategy . . . both take the position that an imminent threat is no longer required as

[23] Ibid., H7779.
[24] Ibid., S10241.
[25] Congressional Record, 107th Cong., 2nd sess., 9 October 2002, 148, S10233.
[26] Congressional Record, 107th Cong., 2nd sess., 10 October 2002, 148, S10237, S10265.
[27] Ibid., H7739, H7751, H7796.

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a basis for our military action in self-defense." The administration, he suggested, was "explicitly seeking to modify the traditional concept of preemption by deleting the need for 'imminent' and substituting that of 'sufficient threat' in the strategy document and 'continuing threat' in the proposed resolution."[28] "The President," Levin concluded, "is seeking authorization for a unilateral preemptive attack without U.N. authorization or requirement of imminent threat. . . ."[29]

The principle of preemptive war was a target of criticism in the comments of many legislators in both parties in the debate over Iraq; Chuck Hagel, Republican Senator from Nebraska, supported the resolution but argued that "actions in Iraq must come in the context of an American-led, multilateral approach to disarmament, not as the first case for a new American doctrine involving the preemptive use of force."[30] Voting against the resolution, Wisconsin Democratic Senator Russell Feingold related his opposition to his "grave concerns about what such a preemption-plus policy will do to our relationship with our allies, to our national security, and to the cause of world peace. . . ."[31] New York Democratic Senator Hillary Clinton voted in favor of the resolution but, at the same time, claimed that her vote was not an expression of support for "any new doctrine of preemption or for unilateralism. . . ." Conceding that "the resolution before the Senate is not as strong as I would like in requiring the diplomatic route first," Clinton premised her vote in support on a willingness to "take the President at his word that he will try hard to pass a United Nations resolution and seek to avoid war, if possible."[32]

Like Clinton, many Democrats voting in support of the war resolution argued that they were persuaded by the President's assurances that he would pursue diplomacy through the United Nations before undertaking a new war, but most voted against an amendment requiring the president to continue such diplomacy.[33]

West Virginia Democratic Senator Robert Byrd compared the legislation being considered to the Tonkin Gulf Resolution that empowered an uncontrolled spiral of escalation in Vietnam. "This authorization paragraph is a blank check," he argued, "given over to the Chief Executive, not just this one but Chief Executives who will succeed him. There is no sunset provision. There is no termination. . . ."[34] In Byrd's view, the Senate was defaulting on its legal duty by passing such a bill. It was "not heeding the imperatives of the Constitution and is instead poised to hand off to the President of the United States the exclu-

[28] Congressional Record, 107th Cong., 2nd sess., 9 October 2002, 148, S10194.
[29] Ibid.
[30] Ibid., S10176.
[31] Ibid., S10147.
[32] Congressional Record, 107th Cong., 2nd sess., 10 October 2002, 148, S10290.
[33] Ibid., H7739.
[34] Congressional Record, 107th Cong., 2nd sess., 8 October 2002, 148, S10074.

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sive power of Congress to determine matters of war and peace."[35] "We must not allow any president," Byrd suggested in a *New York Times* editorial, "to unleash the dogs of war at his own discretion and for an unlimited period of time."[36]

The President, Congress, and the Use of Force in the 1990s

The events of September 11 gave rise to a political environment in America that was anything but normal. As a society, the United States was shocked and outraged, shaken in a way that it had not been in a generation or more, and it would, therefore, be simplistic to view politics in the aftermath of the attack as necessarily representative of broader trends. Just as Lincoln's suspension of *habeus corpus* rights during the Civil War, or Roosevelt's internment of Japanese Americans in the days after Pearl Harbor, were arguably unconstitutional, but reflective of the extreme stress being endured by the nation, the virtually unlimited freedom of the Bush administration to conduct the war on terrorism might be viewed as simply a function of unusual circumstances.

But this is not the case. The gradual erosion of the congressional authority over war is a trend which has now spanned many decades. The war on terrorism is only the latest in a series of presidential wars, which have been both the cause and the effect of a steadily growing willingness of Americans and their elected representatives to accept that the president can determine unilaterally when, where, who, and how the nation will fight. Who should hold the authority to prosecute wars is a question as old as the Constitution itself, but the answer the current generation of Americans has come to understand—that it is the president, and the president alone—has emerged only since the end of World War II.

This trend was, to a large extent, a consequence of the Cold War, but it did not end with the Cold War. In fact, the liberty with which presidents have engaged in military intervention, and the willingness of Congress to defer to their authority, have grown even further since the collapse of the Soviet Union. President Bill Clinton used force abroad more often than any president in living memory, and while there was no war on the scale of Vietnam in the last decade, the use of cruise missiles, air strikes, and the deployment of tens of thousands of troops into unstable regions became increasingly commonplace. None of the uses of force during Clinton's tenure was explicitly authorized by Congress.

In deploying troops to a potential conflict in Haiti in 1994, the Clinton administration argued that the president had sufficient authority to conduct the invasion as Commander in Chief under Article II of the Constitution.[37] Congress demanded to be consulted on any prospective operations in Haiti, but

[35] Congressional Record, 107th Cong., 2nd sess., 10 October 2002, 148, S10276.
[36] Byrd, "Congress Must Resist the Rush to War."
[37] 18 Op. Off. Legal Counsel 173 (1994).

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could not reach a clear consensus on the issue once the operation had begun. The ultimate result was a nonbinding statement, after the fact, that "the President should have sought and welcomed congressional approval before deploying United States Armed Forces to Haiti."[38] Congress had voted to cut off funding for U.S. military operations in Somalia a year before, but only after Clinton had announced that all U.S. troops would be pulled out in any case.[39]

In the Balkans, in March of 1993, the president ordered U.S. warplanes to enforce a no-fly zone over Yugoslavia and, in February of 1994, to begin bombing Serb ground targets there. The strikes were repeated in April, August, and November of 1994, and again in August and September of 1995. Clinton did not seek congressional approval for these attacks, instead arguing that U.S. forces "participate in these operations pursuant to my constitutional authority to conduct U.S. foreign relations and as Commander in Chief" and that "authorization" was provided by "U.N. Security Council resolutions and in full compliance with NATO procedures."[40]

Similarly, the administration did not acknowledge any legal requirement to submit for congressional approval the plan for the deployment of 20,000 U.S. troops to Bosnia as part of the Dayton Accord Implementation Force (IFOR) in late 1995.[41] While many in Congress expressed strong opposition to the deployment, both houses voted down restrictions on funding for the operation and were only able to express a nonbinding sense of "serious concerns and opposition to the President's policy" but "pride and admiration" in the troops.[42]

The case of the 1995 IFOR deployment also suggests another facet of the growing power of the president over Congress in warmaking, in that (in the words of William Banks and Jeffrey Straussman) "the commander in chief has acquired his own spending power, eroding the congressional power of the purse and the check it gives on executive national security initiatives."[43] Lump-sum appropriations have allowed the executive to move military expenditures from one purpose to another with relative freedom, financing operations which Congress did not specifically authorize or appropriate funds for.[44] In hearings in late 1995, Chairman of the Senate Appropriations Committee Ted Stevens of Alaska said about the Bosnia mission that while he "oppose[d] this deployment . . . it is not our prerogative here to debate. . . . The President has ordered the deploy-

[38] Pub L. No. 103-423 (section) 1, 108 Stat. 4358 (1994) (expressing the sense of the Congress).

[39] 107 Stat. 1475-77, sec. 8151 (1993); see Lori Fisler Damrosch,"The Clinton Administration and War Powers," *Law and Contemporary Problems* 63 (Winter/Spring 2000): 125–141.

[40] "Letter to Congressional Leaders Reporting on NATO Action in Bosnia, March 1, 1994," Public Papers of the Presidents, William J. Clinton, 1994, I, 355.

[41] Damrosch, "The Clinton Administration and War Powers," 126.

[42] H.R.J. Res. 302, 141 Cong. Rec. H14849, 13 December 1995.

[43] William C. Banks and Jeffrey D. Straussman, "A New Imperial Presidency? Insights from U.S. Involvement in Bosnia," *Political Science Quarterly* 114 (Summer 1999): 212.

[44] Ibid., 209.

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ment . . . [and] we have no way to prevent that."[45] This is a statement that the Framers of the Constitution would have found confusing and fundamentally inconsistent with the regime of war powers they had created.

On the eve of his impeachment in the fall of 1998, President Clinton ordered a series of military strikes against Iraq, culminating in a massive aerial bombardment termed "Operation Desert Fox," in response to the Iraqi government's continued refusal to submit to UN-mandated arms inspections. "The president of the United States, on his authority alone, ordered the U.S. Navy to fire forty-four cruise missiles into Iraq," Robert Previdi noted at the time. "Do we really want any president firing missiles anywhere in the world anytime he wants?"[46]

The Clinton administration's legal rationale for the almost continuous air strikes against Iraq during the 1990s rested on the very same reasoning that the second Bush administration would cite in 2002 to argue that no new congressional action was necessary in advance of full-scale war there. The Clinton administration argued that on 14 January 1991, when Congress authorized the first President Bush to use force in the Persian Gulf, the language it chose also conferred broad authority on the president to use force to implement a series of UN Security Council resolutions, the last of which specified that beyond repelling Iraq's invasion of Kuwait, UN member states should work "to restore international peace and security in the region" and to "uphold and implement resolution 660 (1990) and all subsequent relevant resolutions."[47] A broad interpretation of the president's authority to use force suggested that the phrase "all subsequent relevant resolutions" meant that Congress's mandate extended to any Security Council resolution relating to the region passed after 14 January 1991 and also justified any policy intended to restore "peace and security" to the Persian Gulf.[48] To its critics, this reading seemed to suggest the "delegation of the war power in perpetuity" from Congress to the president and the UN Security Council.[49]

The Clinton administration had claimed in February of 1998 that the president's Commander-in-Chief power gave him the discretion "to use armed forces to protect our national interests,"[50] a "breathtaking" reading of the law, according to Louis Fisher. If, "whenever the president determines, on his own, that a matter is in the national interest, he may use military force against another nation without ever seeking authority from Congress, [then] The Constitution is no longer a reference point."[51] In August of 1998, Clinton ordered the

[45] Congressional Record, 104th Cong., 1st sess., 1, December 1995, S. Hrg. 104–286, 35.

[46] Robert Previdi, "War Powers," review of *War Powers: The President, the Congress, and the Question of War*, by Donald L. Westerfield, Praeger, 1996, *Presidential Studies Quarterly* 27 (Fall 1997): 844.

[47] Pub. L. No. 102-1, 105 Stat. 4 (1991).

[48] Louis Fisher, "Military Action Against Iraq," *Presidential Studies Quarterly* 28 (Fall 1998): 795.

[49] Ibid., 796.

[50] Congressional Record, 105 Cong., 2nd sess., 24 June 1998, 144, H5217.

[51] Fisher, "Military Action Against Iraq," 795.

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launch of dozens of cruise missiles against targets in Sudan and Afghanistan, stating again that he had "directed these actions pursuant to my constitutional authority to conduct U.S. foreign relations and as Commander in Chief and Chief Executive."[52] Though Congress is vested with the sole constitutional authority to make war, Clinton did not request congressional approval in these cases. He did not formally consult with Congress at all, and, thus, his actions were usurpatious.

Clinton's most ambitious test of his authority to make war beyond the constraints of the Constitution, however, was the 1999 war in Kosovo. A major use of force by any standard, the Kosovo conflict lasted seventy-nine days in the spring of 1999 and involved some 30,000 U.S. combat and support forces (not including the 7,000 that were deployed as part of a NATO force totaling 50,000 after the war's conclusion). Eight hundred American aircraft flew more than 20,000 sorties over Yugoslavia, and in total more than 23,000 NATO bombs and missiles fell on the country.[53] It was the most extensive U.S. combat operation since the Gulf war, and it was carried out at the bidding of the President alone.

Doubts about the constitutionality of the President's actions were a major theme in the congressional debate over Kosovo. "This is war," Republican Tom Campbell of California claimed. "There is no logical denying that it is war. All of the arguments about the inherent power of the President as commander in chief are based on the premise of an emergency—an attack on the United States, the invitation of an ally which is itself under attack. And none of those are present here."[54] Clinton, meanwhile, warned that "America must continue to speak with a single voice." He had said earlier that he opposed a ground war but still believed he had the authority to deploy troops without congressional approval.[55] On 28 April 1999, the House of Representatives voted to prohibit the president from using appropriated funds to send ground forces into Kosovo without congressional approval and voted against a declaration of war (by a margin of 427–2—the first declaration of war Congress had voted on since World War II). But the House also voted 290–139 against a resolution that proposed to end the war by invoking the War Powers Resolution and rejected (by a tie vote of 213–213) a resolution supporting the ongoing air campaign.[56]

Noting the inability of Congress to take any decisive stand on the war, White House Press Secretary Joe Lockhart suggested that the House of Repre-

[52] "Letter to Congressional Leaders Reporting on Military Action Against Terrorist Sites in Afghanistan and Sudan; August 21, 1998," Public Papers of the Presidents, William J. Clinton, 1998, II, 1464.

[53] Delahunty and Yoo, "The President's Constitutional Authority," 501.

[54] Congressional Record, 106th Cong., 1st sess., 28 April 1999, 145, H 2427; see also Eliza Newlin Carney, "At Last, Congress Enters the War Zone," *National Journal* 31 (1 May 1999): 1174.

[55] Bob Hohler, "House Votes for a Say on Ground War; A Bid to Pull US Forces from Balkans Loses," *Boston Globe*, 29 April 1999.

[56] Congressional Record, 106th Cong., 1st sess., 28 April 1999, 145, H2376, H2414, H2427.

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sentatives had voted "no on going forward, no on going back and they tied on standing still."[57] The House later did what one reporter referred to as a "full back flip" when it approved special military appropriations for the war at twice the level requested by the administration.[58]

In the end, Kosovo demonstrated to many in official Washington the critical importance of quick action and the potentially decisive role of air power in limited wars. If Kosovo proved the effectiveness of a certain model of warfare to some observers, however, and the incapacity of Congress to take a clear stand on foreign policy in a crisis to others, it also showed the troubling extremes to which the erosion of the constitutional war-making system has progressed. It was a large-scale, sustained conflict against another sovereign state, involving tens of thousands of U.S. forces and resulting in casualties likely numbering well into the thousands. It was a presidential war and the first major use of force in American history conducted in the face of the explicit refusal of Congress to authorize it.

The Constitutional Framework

In 1993, the Office of Legal Counsel of President Clinton's Department of Justice wrote about the administration's policy in Somalia:

> From the instructions of President Jefferson's Administration to Commodore Richard Dale in 1801 to 'chastise Algiers and Tripoli if they continued to attack American shipping,' to the present, Presidents have taken military initiatives abroad on the basis of their constitutional authority. . . . Against the background of this repeated past practice under many Presidents . . . the President has the power to commit United States troops abroad for the purpose of protecting important national interests.[59]

The administration was rightly seeking to place its choice to use force within the boundaries of historical precedent and the original intent of the Framers of the Constitution, who unquestionably saw the president as the officer of government most fit to manage the conduct of war. Edward Corwin has famously written that the foreign affairs powers in the Constitution were so intimately commingled as to form "an invitation to struggle for the privilege of directing American foreign policy."[60] Whatever can be said about the original intent of the Founders, it is clear that as with all of the functions of the new

[57] Alison Mitchell, "Deadlocked House Denies Support for Air Campaign," *New York Times*, 29 April 1999.

[58] Guy Gugliotta, "A Balkanized Congress: Lawmakers All over the Map as They Grapple With How They Should Run the War in Kosovo," *Washington Post National Weekly Edition*, 17 May 1999.

[59] 16 Op. Off. Legal Counsel 9 (1993).

[60] Edward S. Corwin, *The President: Office and Powers* (New York: New York University Press, 1957), 171.

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government of the United States, they sought to create a balance of power and ambition between the branches to check the prospect of domination by any of them. This was a sound approach, then and now. The problem that confronts American foreign policy at the opening of the twenty-first century is that the system has fallen out of balance; the presidency has attained greater sway over the power to make war than the Founders ever would have accepted.

Article II, Section two of the Constitution established that "the President shall be Commander in Chief of the Army and the Navy of the United States." But Article I granted to Congress the authority to "lay and collect Taxes, Duties, Imposts and Excises . . . and provide for the common Defence"; to "define and punish Piracies and Felonies committed on the high seas, and Offences against the Law of nations; [t]o declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water." It also granted a variety of powers relating to the creation and maintenance of the Army, Navy, and militia, both at home and abroad. "Thus," Harold Hongju Koh has written, "the Constitution expressly divided foreign affairs powers among the three branches of government, with *Congress*, not the president, being granted the dominant role."[61]

In this respect, the Founders were intentionally breaking with their own history. The British monarchical system was one in which the executive power to make war was far broader, and this was a model that the Founders self-consciously sought to reject. As Alexander Hamilton noted in *The Federalist, No. 69*, the president would be nothing more than the "first General and admiral of the Confederacy; while [the authority] of the British King extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies—all which, by the Constitution under consideration, would appertain to the legislature."[62]

At the time of the drafting of the Constitution, Hamilton expected that foreign policy would be established primarily by the Senate and merely executed by the president.[63] In this respect, Hamilton was expressing not just his own view at the time, but the overwhelming consensus at the Convention. The "Framers of the Constitution intended the Senate to be the principal architect of foreign policy," Leonard Levy has written, to such an extent that "had original intent prevailed, we would speak of the imperial Senate, not the imperial Presidency."[64]

Roger Sherman of Connecticut suggested at the Constitutional Convention that the executive should be viewed "as nothing more than an institution for

[61] Harold Hongju Koh, *The National Security Constitution: Sharing Power after the Iran-Contra Affair* (New Haven, CT: Yale University Press, 1990), 75; author's emphasis.

[62] Alexander Hamilton quoted in Benjamin Fletcher Wright, ed., *The Federalist* (Cambridge, MA: Harvard University Press, 1961), no. 69.

[63] Leonard W. Levy, "Foreign Policy and War Powers: The Presidency and the Framers," *The American Scholar* 66 (Spring 1997): 273.

[64] Ibid., 271.

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carrying the will of the Legislature into effect."[65] When the war clause was debated on 17 August 1787, he argued as well that "the Executive should be able to repel and not to commence war."[66] On this point, Pierce Butler of South Carolina disagreed with him, saying he "was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it."[67] But Butler was the only voice in favor of this; no one else spoke in favor of a strong executive war power before or after this point. There was no support expressed for Butler's view at the time and no second to his motion. Elbridge Gerry expressed shock at Butler's opinion, saying that he "never expected to hear in a republic a motion to empower the Executive alone to declare war."[68]

Proponents of presidential autonomy have made much of the Constitution's language granting Congress the power to "declare" war, arguing that since formal declarations of war are archaic legal formalities, the congressional war power is a "moribund anachronism" in the modern era.[69] In this view, Congress's power to declare war is comparable to its power to grant letters of Marque and Reprisal, authorizations for use of force by private citizens, which has long since fallen into disuse. However, the draft of the Constitution which the delegates considered on 17 August originally spoke of a congressional power to "make war," rather than "declare war," and the substitution was made for the simple purpose of leaving "the Executive the power to repel sudden attacks."[70] By all accounts, the Framers viewed this as a nearly inconsequential change; Levy notes that Roger Sherman, for example, "continued to speak of the power of Congress to 'make' war, as if no difference existed between 'make' and 'declare.'"[71] Louis Fisher and David Adler have argued that, in legal parlance of the day, the terms were essentially interchangeable.[72]

In the wake of the Convention, Anti-Federalist criticism of the proposed Constitution focused very little on the subject of foreign policy powers, which certainly would have been an intense point of contention if it was thought that the document sought to create a president capable of initiating war unilaterally. In the state ratifying conventions that followed, only one of the seventy-seven total recommendations for change put forward dealt with war powers and that recommendation suggested a two-thirds rather than a simple majority in Congress to declare war.[73]

[65] Max Farrand, ed., *The Records of the Federal Convention of 1787*, vol. 1, (New Haven, CT: Yale University Press, 1937), 65.

[66] Ibid., 318.

[67] Ibid.

[68] Ibid.

[69] Robert Turner, "The War on Terrorism," 520.

[70] Farrand, *The Records of the Federal Convention of 1787*, vol. 2, 320–321.

[71] Levy, "Foreign Policy and War Powers," 273.

[72] Louis Fisher and David Gray Adler, "The War Powers Resolution: Time to Say Goodbye," *Political Science Quarterly* 113 (Spring 1998): 5.

[73] Levy, "Foreign Policy and War Powers," 273.

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In any case, the writings of James Madison, who had proposed the substitution of "declare war" for "make war," leave no ambiguity about his view of the question. "In no part of the Constitution is more wisdom to be found," Madison said, "than in the clause which confides the question of peace and war to the legislature, and not to the executive branch."[74] In a letter to Thomas Jefferson, he wrote that "the constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care vested the question of war in the Legislature."[75] Madison viewed the war power as the one most susceptible to abuse and, therefore, the one to be exercised most judiciously. The conclusion that Congress should hold this power did not derive from the assumption that Congress would always be wiser than the president, but rather from the belief that collective action after exhaustive debate would more reliably lead to better, more circumspect policy.[76] "Those who are to conduct a war," Madison said, "cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued or concluded."[77]

Robert Turner has argued that in vesting the power to declare war in Congress, the Founders were seeking to limit aggressive war, a practice which in their era was still assumed in international law to be the sovereign right of states. Since offensive war has been thoroughly discredited as a legitimate element of statecraft in the intervening centuries, and since the definition of "defensive" war has dramatically expanded with the interdependence of the world community and growth of the U.S. world role, Turner has suggested that the power of Congress to "declare war" as described in Article I is a historical anachronism.[78] Robert Delahunty and John Yoo, among others, have echoed this conclusion, noting that even in the first years of the republic, Thomas Jefferson argued as Secretary of State that "the transaction of business with foreign nations is executive altogether"[79] and that future Chief Justice John Marshall held that "the President is the sole organ of the nation in its external relations. . . ."[80]

These arguments, however, rely on misreadings of the views of the authors of the Constitution and their contemporaries, as well as the Constitution itself. Jefferson's statement regarding the "transaction of foreign business" referred only to the sending and receiving of ambassadors, as Leonard Levy has noted, not to the conduct of foreign policy in general.[81] Marshall's declaration was similarly intended to apply only to the process of communicating with foreign na-

[74] James Madison in Hunt, *The Writings of James Madison*, vol. 6, 174.
[75] Ibid., 312.
[76] David Gray Adler, "Virtues of the War Clause," *Presidential Studies Quarterly* 30 (Dec. 2000): 779.
[77] James Madison in Hunt, *The Writings of James Madison*, vol. 6, 148.
[78] Robert Turner, "The War on Terrorism," 522–523.
[79] Thomas Jefferson in Paul L. Ford, ed., *The Writings of Thomas Jefferson*, vol. 5, (1895), 161.
[80] Delahunty and Yoo, "The President's Constitutional Authority," 494.
[81] Levy, "Foreign Policy and War Powers," 273.

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tions, not the process of going to war with them. Turner's interpretation suggests that restraints on the president which were once necessary no longer are because international norms have changed, but does not acknowledge the difficulty of distinguishing between "defending" the nation's security and interests and undertaking "aggressive" conquest. In practice, the definition and application of these terms is often politically charged and highly debatable, in the twenty-first century just as it was in the eighteenth. This was precisely why the Framers sought to give the most deliberative elements of the new government the authority to decide whether force should be employed, except in truly extraordinary cases when an attack on the nation allowed no time for discussion. Even over the course of two centuries, the international system has not changed so dramatically that the invasion of a country half a world away by tens of thousands of troops, or the sustained aerial bombardment of cities over weeks and months, can reasonably be called "defensive" in a way that might disavow the Founders's expectation of congressional involvement.

No matter how modern observers might seek to reinterpret the intentions of the Framers, the words of George Washington in 1793 remain clear enough: "The Constitution vests the power of declaring war with Congress; therefore no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure."[82] When the authors of the Constitution noted that the president should be able to "repel" sudden attacks, they did not mean prevent or "forestall." They assumed that unless an attack was about to get underway, there was time for Congress to consider the nature of the threat and determine whether war was justified. That assumption remains valid today.

War Powers in Historical Context

The Founders could not possibly have imagined the demands of the world more than two centuries after the creation of the Constitution. Though they clearly believed they were writing a document, not just for their own time, but for the lifetime of the nation, they lived in a world in which there had not been a fundamental change in the speed of communication or transportation in the previous two thousand years. The new United States possessed virtually limitless natural resources and was protected by vast oceans to the east and west and weaker neighbors to the north and south. It can reasonably be argued that the Founders imagined a diplomatically and militarily isolated nation, one that could not easily be threatened from abroad and, therefore, had the luxury of ponderously slow decision making on issues of war and peace. This is clearly not an accurate picture of the United States in 2002, however, nor has it been for a century or

[82] George Washington, "August 28, 1793 Letter to Governor William Moultrie" in John C. Fitzpatrick, ed., *Writings of George Washington*, vol. 33 (Washington, DC: U.S. Government Printing Office, 1940), 73.

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more, which has led some observers to the view that the congressional war power, while perhaps appropriate in its time, is ill-suited to the demands of the modern world.

And yet, the Founders understood very well that the new United States would not immediately be secure within its borders. They wrote the Constitution to contend with an international system in which their new republic would face immediate, profound threats to its very survival. In the first few decades of its existence, the United States fought wars with France and Britain, the two greatest military powers on earth. The nation was invaded, had its capital burned to the ground, and was nearly destroyed in its infancy. Yet, neither the president nor Congress viewed these situations as ones demanding presidential seizure of the war power; both the Franco-American war (or Quasi-War) in 1798–1800 and the War of 1812 were specifically authorized by Congress.[83]

In fact, the Founders's original intent for war powers prevailed for a century and a half beyond the creation of the Constitution–well into the age of mass communications, mechanized transportation, and air power. Despite revolutionary change in the international system and the U.S.'s place within it, Harold Koh has argued that "by 1933, neither institutional practice, legislative act, nor judicial decision had fundamentally altered the shape of the National Security Constitution."[84] The simple reason was that the system had worked well, allowing for the use of American influence, even the building of an empire, but within a framework of democratic accountability. "The constitutional principle of balanced institutional participation," Koh argues, "had provided the president with considerable foreign policy flexibility to act as the primary expositor and initiator of foreign policy decisions."[85] President Franklin D. Roosevelt, who pressed the limits of presidential authority farther than any chief executive had before, nevertheless realized even in the late 1930s that the Constitution placed real and necessary limits on his power. Even as France teetered on the brink of destruction at the hands of Hitler's Germany, he was forced to answer French calls for aid by saying "only the Congress can make such commitments."[86]

Roosevelt did commit American forces overseas without congressional approval–garrisoning forces in Iceland and Greenland, notably, and ordering American ships to fire on German submarines on sight in 1941. If he was held in check, his example did provide precedent for future presidents to expand the power of the office further. In the late 1940s, the emerging conventional wisdom that congressional isolationism in the 1930s had been wrongheaded and that there was a new foreign crisis looming which demanded deference to presidential leadership helped to shape a new regime in war making, in effect the

[83] David S. Friedman, "Waging War Against Checks and Balances: The Claim of an Unlimited Presidential War Power," *St. John's Law Review* 57 (Winter 1983): 228.

[84] Koh, *The National Security Constitution*, 90.

[85] Ibid., 92.

[86] Corwin, *The President: Office and Powers*, 246.

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most fundamental shift in the conduct of this power since the writing of the Constitution. After Harry Truman committed the United States to a major war in Korea in 1950 without congressional approval, making the argument that the Senate's ratification of the UN Charter gave authorization for war under the UN's auspices, a new paradigm was firmly in place.[87] Thereafter, Commanders in Chief would cite Korea as a precedent, arguing that rapidly developing crises simply did not allow for lengthy deliberation, that the president did not need Congress's support to act in these instances, and sometimes even that Congress did not have the authority to stop the executive from acting.[88] From Truman to Bill Clinton, every president would also learn that there would be political costs to this exercise of unilateral powers, since in Korea—and later in Vietnam, Cambodia, Lebanon, Nicaragua, and Somalia—unsuccessful or unpopular wars could be squarely blamed on the president alone.[89]

After the second World War, the nature of America's world role changed dramatically. While the Founders likely imagined a foreign policy designed primarily to protect U.S. interests on or near the North American continent, after World War II the United States acquired an unprecedented and vast network of alliances and bases around the globe. "Self-defense" came to mean both fighting on behalf of others (as the notion of "collective self-defense" between allies came to color U.S. strategic thinking) and protecting the nation's economic and military assets and the lives of its citizens around the world.[90]

Holding that since the Constitution allows for presidents to engage in "defensive" wars, and that agreements like the North Atlantic Treaty or UN Charter commit the United States to the use of force on behalf of other signatories, successive administrations argued that no further authorization from Congress is needed for military operations sanctioned by these organizations. In 1992, for example, President George H. W. Bush stated that UN Security Council resolution 678, since it was a binding measure under Article VII of the UN charter, meant that he did not "have to get permission from some old goat in the United States Congress to kick Saddam Hussein out of Kuwait."[91]

Yet, when Congress debated and approved U.S. adherence to the UN Charter, it explicitly insisted on a continuing congressional role in decisions regarding U.S. participation in military operations of the world body—and it certainly did not intend to cede the congressional authority to declare war. Section 6 of the UN Participation Act of 1945 specifies that the participation of U.S. troops in UN actions "shall be subject to the approval of the Congress by appro-

[87] Louis Fisher, *Presidential War Power* (Lawrence: University Press of Kansas, 1995), 92–97, 188–189.

[88] Banks and Straussman, "A New Imperial Presidency?" 205.

[89] Louis Fisher, "Congressional Checks on Military Initiatives," *Political Science Quarterly* 109 (Winter 1994–95): 742.

[90] Ibid., 743.

[91] "Remarks at the Texas State Republican Convention in Dallas, Texas, June 20, 1992," Public Papers of the Presidents, George H. W. Bush, 1992, I, 995.

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priate Act or joint resolution" of both the House and the Senate.[92] In the case of the North Atlantic Treaty, Congress spelled out unequivocally that U.S. participation in major conflict under the treaty would require congressional authorization,[93] and the treaty itself specified that its provisions were to be undertaken "in accordance with the parties' constitutional processes."[94]

Despite some efforts by Congress to protect its constitutional role after the second World War, the growing complexity of world affairs and the extraordinary threat seen to be posed by the Soviet Union created a growing pattern of presidential assertiveness and congressional deference in the decades that followed. In 1969, the Senate Foreign Relations Committee reached the conclusion that "the concentration of power in the executive branch has progressed to such a point that it is no longer accurate to characterize our government, in matters of foreign relations, as one of separated powers balanced against each other."[95]

The most important legislative effort to rectify this imbalance came four years later, with the passage over President Richard M. Nixon's veto of the War Powers Resolution in 1973, limiting by statute presidential authority to conduct war to sixty or ninety days, absent specific authorization by Congress.

The WPR was a bold attempt to seize back the constitutional role of Congress, but in practice its weaknesses have been more evident than its strengths from the start. Notably, the sixty- to ninety-day clock becomes active only when presidents report to Congress specifically under Section 4(a)(1), which they have typically chosen not to do.[96] Thus, presidents can simply dodge the Resolution's reporting requirements and, thus, its effectiveness in limiting the duration of unauthorized war. No president has ever acknowledged that its sixty- to ninety-day clock had actually begun running, and with slight differences of emphasis, every administration has held that the WPR constitutes an unconstitutional attempt to limit the power of the Commander in Chief under Article II.[97] Though the WPR imposes on the president a duty to "consult" with Congress, the meaning of this term has always been ambiguous; presidents have tended to interpret it to mean notifying members of Congress about decisions that have already been made, and often, wars that are already under way.[98]

Many in Congress have continued to view the WPR as an important statute (notably, quickly passing a separate law to require a joint resolution rather than a concurrent resolution when the latter were declared unconstitutional in *INS*

[92] United Nations Participation Act, 59 Stat. 621, sec. 6 (1945).

[93] David P. Forsythe and Ryan C. Hendrickson, "U.S. Use of Force Abroad: What Law for the President," *Presidential Studies Quarterly* 26 (Fall 1996): 55.

[94] Banks and Straussman, "A New Imperial Presidency," 204.

[95] Louis Fisher, "War Powers: The Need for Collective Judgment" in James Thurber, ed. *Divided Democracy* (Washington, DC: Congressional Quarterly Press, 1991), 210.

[96] Fisher and Adler, "The War Powers Resolution."

[97] Damrosch, "The Clinton Administration and War Powers."

[98] Fisher and Adler, "The War Powers Resolution."

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v. Chadha).[99] While presidents may have been informally restrained by its time limit, however, in the end its effect has been inconsistent, and as a practical matter it does little to support the view of the WPR as a major step back toward the Framers's intent.

This becomes particularly evident in light of the way in which the ninety-day limit has been used by presidents, even when they have kept military operations within it. The assertiveness within which presidents have used force since 1973 has steadily increased, rather than decreased, and they may have acted in part because of, rather than in spite of, the existence of the WPR. Technological advancement has meant that modern militaries are more able than ever before to cause tremendous destruction in minutes or hours, rendering the WPR's three-month time scale largely irrelevant. More critically, however, the WPR has actually empowered presidents to act with more freedom than they might otherwise have been able to within those three months, since it seems to imply that Congress's ability to decide when wars should occur begins only at the end of this time limit.

Fisher and Adler have argued that the practical effect of the WPR has been to "grant to the president unbridled discretion to go to war as he deems necessary against anyone, anytime, anywhere, for at least ninety days."[100] Arthur M. Schlesinger, Jr. has echoed this view, noting that before "the passage of the resolution, unilateral presidential war was a matter of usurpation. Now, at least for the first ninety days, it was a matter of law."[101] The Resolution is internally contradictory, specifying in Section 2(c) that presidential power to conduct war must occur in constitutionally valid circumstances—after a congressional declaration of war or other statutory authorization, or an attack on U.S. territory or military forces—but then allowing the president to act without restraint for sixty or ninety days in sections 3, 4, and 5.[102] Concern over this issue was voiced even at the time of the WPR's original passage, when a number of House Democrats sided with President Nixon in opposing it, albeit for very different reasons. Nixon's presidency was deeply mired in the Watergate scandal when the WPR became law, but some in Congress believed that the WPR might actually strengthen a president with the political capital to use it liberally. Bob Eckhardt of Texas argued that in the Resolution, despite its intent to the contrary, "the Congress provides the color of authority to the President to exercise a warmaking power which I find the Constitution has exclusively assigned to the Congress."[103] Ronald Dellums of California agreed, noting that while "many people will regard this as a victory against the incumbent President . . . I am convinced that it will actually strengthen the position of future Presidents."[104] Judged in the light of the last three decades of history, Dellums's view appears to have been prescient.

[99] Eric Gartzke, "Congress and Back Seat Driving: An Information Theory of the War Powers Resolution," *Policy Studies Journal* 24 (Summer 1996): 261.

[100] Fisher and Adler, "The War Powers Resolution," 2.

[101] Arthur M. Schlesinger, Jr., *The Imperial Presidency* (Boston: Houghton Mifflin, 1989), 434–435.

[102] Fisher and Alder, "The War Powers Resolution," 3.

[103] Ibid., 13.

[104] Ibid., 14.

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The Role of the Courts

Court rulings on questions of war powers over the last two centuries have been mixed, but broadly supportive of the authority of Congress. A variety of early rulings, which have never been overturned and, therefore, still control the law, unequivocally endorsed the power of the legislative branch to decide questions of war and peace. In *Bas v. Tingy* (1800), the Supreme Court ruled that it was for Congress alone to authorize both "imperfect," or limited, and "perfect," or unlimited wars.[105] In *Talbot v. Seeman* the following year, Chief Justice John Marshall wrote for the Court that the "whole powers of war [are] by the Constitution of the United States, vested in congress."[106] In *United States v. Smith* in 1806, Justice William Paterson asked "does he [the president] possess the power of making war?" and concluded "that power is exclusively vested in Congress. . . . It is the exclusive province of Congress to change a state of peace into a state of war."[107]

Twentieth-century court decisions have also typically affirmed the critical role of Congress in war making, most notably in *Youngstown Sheet and Tube Co. v. Sawyer* (1952), in which Justice Robert H. Jackson wrote in a concurrent opinion that "[a] crisis that challenges the President equally, or perhaps primarily, challenges Congress. . . ."[108] The major exception to this trend in the twentieth century was the 1936 case of *U.S. v. Curtiss-Wright Export Corporation*, of which much has been made by exponents of presidential power. In that case, Justice George Sutherland wrote for the majority that the president held "plenary and exclusive" authority as the "sole organ of the federal government in the field of international relations," though Sutherland added, confusingly, that this power "must be exercised in subordination to the applicable provisions of the Constitution."[109] Presidents have often cited this ruling in support of their claims for broad power over war making, invariably failing to note that Sutherland's "sole organ" phrasing was borrowed from an 1800 speech by John Marshall in the House of Representatives and that Marshall was referring only to the president's role in *communicating* with foreign governments.[110]

More recently, the courts have expressed reluctance to step into disputes between Congress and the president over war and peace, but typically only because Congress itself has not acted with sufficient vigor to present a justiciable constitutional question. The defining case in this vein occurred during the Carter administration, when a group of legislators sued the president over the issue of treaty powers. In *Goldwater v. Carter*, Justice Lewis Powell wrote that since Congress had not acted, the courts should not play its surrogate at the behest of

[105] *Bas v. Tingy*, 4 U.S. 37, 43 (1800).
[106] *Talbot v. Seeman*, 1 Cr. (5 U.S.), 1, 28 (1801).
[107] *United States v. Smith*, 27 Fed. Cases 1192, 1230, C.C. N.Y. (1806).
[108] *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 654 (1952).
[109] *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).
[110] Corwin, *The President: Office and Powers*, 216.

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a handful of legislators. "Otherwise, we would encourage small groups or even individual Members of Congress to seek judicial resolution of issues before the normal political process has the opportunity to resolve the conflict. . . . If the Congress chooses not to confront the President, it is not our task to do so."[111]

Four separate cases were filed against President Reagan by members of Congress, charging that he had violated the tenets of the War Powers Resolution. When twenty-nine members of the House sued Reagan for failing to report under the WPR when he sent military advisers to El Salvador in 1981, the Court held that it did not have "the resources and expertise" needed to "resolve the disputed questions of fact concerning the military situation in El Salvador," dismissing the case and noting that Congress had not attempted to restrain Reagan legislatively.[112] A similar case filed against Reagan in 1983, regarding the U.S. invasion of Grenada, was likewise dismissed because Congress had not pursued the full extent of legislative remedies available.[113] In yet another case involving the administration's policies in Nicaragua, the district court dismissed the case due to the "impossibility of our undertaking independent resolution without expressing a lack of respect due coordinate branches of government." On appeal, Judge Ruth Bader Ginsburg argued that Congress "has formidable weapons at its disposal—the power of the purse and investigative resources far beyond those available in the Third Branch. But no gauntlet has been thrown down here by a majority of the Members of Congress."[114]

In *Dellums v. Bush* in 1990, fifty-three members of Congress brought suit against President Bush for failing to appropriately consult with Congress regarding war with Iraq. Federal District Judge Harold H. Greene dismissed the case on grounds similar to those cited in the Reagan-era cases. The Court could not be a surrogate for Congress, or a fallback for legislators whose views were not shared by a majority of both houses. "It would hardly do," he argued, "to have the Court, in effect, force a choice upon the Congress by a blunt injunctive decision, called for by only about ten percent of its membership." Until and unless Congress chose to act through the legislative means at its disposal, the decision held, it would be inappropriate for the courts to do so.[115]

At the same time, Judge Greene's ruling in *Dellums* also confirmed the longstanding trend toward interpreting broadly the ultimate power of Congress over questions of war. Greene was not suggesting that Congress could not act, only that it had not acted, and that the opinions of a small percentage of its members could not take the place of action by Congress as a whole. He firmly

[111] *Goldwater v. Carter*, 444 U.S. 996 (1979).

[112] *Crockett v. Reagan*, 558 F. Supp. 893 (D.D.C. 1982), aff'd, *Crockett v. Reagan*, 720, F. 2d 1355 (D.C. Cir. 1983).

[113] *Conyers v. Reagan*, 578 F. Supp 324 (D.D.C. 1984).

[114] *Sanchez-Espinoza v. Reagan*, 568 F. Supp. 596, 600 (D.D.C 1983); *Sanchez-Espinoza v. Reagan*, 770 F. Supp. 2d 202, 211 (D.C. Cir. 1985).

[115] *Dellums v. Bush*, 752 F. Supp. 1141, 1145 (D.C. Cir. 1990).

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rejected the claims of Bush's Justice Department of broad powers of the Commander in Chief to make war, saying that if the executive

> had the sole power to determine that any particular offensive military operation, no matter how vast, does not constitute war-making but only an offensive military attack, the congressional power to declare war will be at the mercy of a semantic decision by the Executive. Such an interpretation would evade the plain language of the Constitution, and it cannot stand.[116]

Finally, in *Campbell v. Clinton* (1999), the courts reached a similar conclusion when asked to rule on the administration's continuing use of force in Yugoslavia in the absence of a congressional mandate. The Court held again that Congress had not done all that it could to stop the action of the executive, and that, based on the votes that had been taken regarding the war, "the most that can be said is that Congress is divided about its position on the President's actions in the FRY [Federal Republic of Yugoslavia] and that the President has continued with air strikes in the face of that divide. Absent a clear impasse between the executive and legislative branches, resort to the judicial branch is inappropriate."[117]

Clearly, courts in the contemporary era are reluctant, and wisely so, to step into disputes between individual legislators and the president when Congress as a whole is not willing or able to take a strong position on the issue in dispute. Their decisions suggest that the War Powers Resolution is not likely to provide a strong vehicle for future litigation, since its application in these suits has tended either to be found insufficient or ignored entirely. The WPR cannot reasonably and constitutionally be applied to mean that a president must withdraw troops, the courts have said, unless further congressional action is taken. Legislators have sued the president because he has placed troops in harm's way and failed to report to Congress and to receive specific authorization within the allotted time; the WPR mandates that in such cases the forces must be withdrawn whether Congress acts or not. But the courts have disagreed, concluding that since Congress could have specifically forbidden the use of U.S. troops, cut off funding, or impeached the president in any of these cases, clearly it would be out of step with the political will of today's Congress for a court to apply the WPR aggressively.[118]

But if the WPR will not provide a fruitful avenue for future congressional challenges to presidential war making, it is also true that the preponderance of both recent and historic court decisions have strongly affirmed the authority of Congress to decide questions of the use of force. If the courts have tended to rule that a few members of Congress cannot decide these questions, they have also clearly asserted that Congress as a whole, should it choose to act to rein

[116] Ibid.

[117] *Campbell v. Clinton*, 52 F. Supp. 2nd 34, 45 (D.D.C. 1999).

[118] Geoffrey S. Corn, "*Campbell v. Clinton* (203 F. Supp. 3d 19 (D.C. Cir. 2000)): The 'Implied Consent' Theory of Presidential War Power Is Again Validated," *Military Law Review* 161 (September 1999): 207.

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in presidential adventurism in military affairs, is solidly within its constitutional authority to do so. From the earliest days of the republic until today, the trail of legal precedent gives compelling support to the role of Congress as the sole institution enabled by the Founders to weigh the question of whether and when to use military force. The courts have said they will not accept this role if Congress will not act, but there is every reason to believe they would support its actions unequivocally if it did.

Toward a New Balance in War Powers

Two hundred and sixteen years after the writing of the Constitution, technology has dramatically increased the speed with which both threats to the nation's interests and responses to those threats often move. These changes demand a reconsideration of the means by which the U.S. government manages the conduct of war; new arrangements are needed to address the ambiguity of covert operations and "limited" wars which may last only days or hours. Adaptation to the world of the twenty-first century should begin, however, with a return to the Republic's founding principle of a balance of powers between the branches of government. The current *status quo* has emerged from a gradual erosion of this principle and, thus, must be seen as antithetical to the health of constitutional democracy itself.

The United States in the new century is a global power faced by threats and opportunities that could not have been imagined by the Framers. In this new environment, the singularity of the presidency, and its capacity to act as a nexus for intelligence and a center of rapid information analysis, are more critical assets in the pursuit of the nation's interests than ever before. But these strengths of the executive do not mean that all combat operations that can be loosely construed as "defensive" should be conducted solely at the discretion of the president.

Whatever other reforms might be undertaken, the current process of consultation is in dire need of reform. The legislative history of the WPR suggests that consultation was expected to occur regarding a "decision [that] is pending on a problem and that members of Congress are being asked by the president for their advice and opinions and, in appropriate circumstances, their approval of action contemplated."[119] In reality, presidents have tended, when they have consulted with Congress at all, to inform it of decisions that have already been made and policies which are already underway. The more legitimate form of consultation represented by the WPR's original understanding could and should be established firmly in statute law. In the age of teleconferencing, e-mail, and cell phones, the idea that congressional leaders might be unreachable strains credulity; presidents routinely consult with allies for weeks or months before the initiation of hostilities, and key members of the executive branch are also frequently away from their offices, a fact which does not seem to have hindered the ability of the executive branch to use force.

[119] Fisher, "The War Powers Resolution," 741.

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But consultation cannot supplant the congressional authority to declare war, which can be exercised only by the body as a whole and cannot be delegated.[120] Only the reassertion of Congress's strict authority to initiate war would represent movement back toward the original intent of the Founders, giving the legislative branch a voice in the process that it does not currently have, and forcing legislators to accept some part of the political responsibility for decisions to make war. True emergencies could be exempted from this requirement, but the definition of "emergency" should be carefully and precisely constructed in law; legitimate emergencies are few and far between, though the historical willingness of presidents to cite "emergency" situations to justify unilateral action has been great.[121]

Beyond the most immediate and direct responses to sudden attacks, Congress must actively assert its sole authority to declare that a state of war exists or the use of force is justified. Without exception, authorizations of force should name specific states, groups, or individuals to be subject to their terms and the time period and geographic area within which hostilities may occur. Without these requirements, the pattern of ever-expanding interpretations of such resolutions is likely to continue in the future as it has in the past, as with the Persian Gulf Resolution of 1991 and the Tonkin Gulf Resolution before it.

If presidents choose to act outside of the limits of these legal boundaries, Congress should be prepared to respond by beginning impeachment procedures. This process, it might be remembered, had begun in 1974 when the House Judiciary Committee considered articles of impeachment charging that President Nixon had illegally denied the congressional war-making role and concealed the invasion of Cambodia.[122] For better or worse, the impeachment of President Clinton has probably made [the use of this mechanism] a more realistic possibility for the future.

Congress should make greater use of statute law to assert its authority before, during, and after force is used at the order of the president. "Sense of the Congress" resolutions condemning presidential actions are legally meaningless and politically cowardly. They amount to condemnations of the president for taking the initiative of policy making, without any indication of congressional willingness to accept the same burden. They ultimately serve only to further the perception, in Congress and the public alike, that the branches are not legally coequal in foreign affairs.

The power of the purse should be more coherently and intentionally applied as a tool of control of foreign military policy. The use of lump sum budget items for the military should be limited by statute, and significant uses of force should be required to be funded through specific congressional appropriations, without which they cannot be initiated or continued. The use of financial re-

[120] Ibid., 743.
[121] Ibid., 744.
[122] Koh, *The National Security Constitution*, 180.

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strictions to limit military actions entails political risks which most legislators rightly view as very serious; as Senator Jacob Javits noted, many in Congress feel that they "can hardly cut off appropriations when 500,000 American troops are fighting for their lives, as in Vietnam."[123] But this perspective is both simplistic and irresponsible because elected representatives have not only the power to make the case to their own constituents about why they disagree with the president but also the duty to assert their constitutional opposition to policies they view as misguided. They are not serving their own interests, the nation's, or its soldiers' by standing by while lives are lost in ill-chosen wars. The courage of American men and women in uniform ought to be matched by the courage of lawmakers to ensure that they are not placed in harm's way in vain.

For all its difficulties, there is evidence that Congress can stop presidential war making with the power of the purse if it chooses to. The Vietnam War ended in 1973 in part because Congress eventually refused to continue funding it. Three years later Congress restricted CIA operations in Angola using the same mechanism. In the mid 1980s, it disallowed funding for the Reagan administration's backing of insurgents in Nicaragua—a policy that, while it did not halt support, did force the administration to go to extraordinary lengths and ultimately to endure a scandal to continue it.[124]

Attempts at statutory change should occur at moments when crisis is absent, and late in a president's term—thus decreasing the perception that either party is restricting "its" president. In a crisis, the political costs to legislators of appearing to hamstring the president are typically too high to bear. These are exactly the moments when war powers issues become most salient, of course, but this only means that forethought will be critical if Congress wishes to oblige the president by statute to seek specific line-item appropriations for uses of force, for example. Stronger abstract restraints—rules that will apply to any use of force, like the WPR—will raise the political risks in ignoring Congress, just as the WPR has done, even for presidents who criticize and ostensibly ignore them. But such limits will not likely restrain the president as effectively as a direct congressional challenge to a particular presidential use of force. In such an instance, the courts may well be more sympathetic than they recently have been, since congressional suits against the president in recent decades have usually been dismissed on the grounds that the plaintiffs were not speaking for the majority of Congress.

The current state of affairs has not arisen by accident or presidential *coup d'etat*, but because many of the actors in all branches of government have found it politically useful. The courts have been right to refuse judgment, simply because Congress itself has refused judgment. The Constitution assumes that political officials will pursue their own advantage, but with the presumption that

[123] Jacob J. Javits, "The War Powers Resolution and the Constitution: A Special Introduction" in Demetrios Caraley, ed., *The President's War Powers: From the Federalists to Reagan* (New York: Academy of Political Science, 1984), 3.

[124] Fisher, "The War Powers Resolution," 751.

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the branches of government should exercise their authority "in such a manner as that each may be a check on the other."[125] Decisions to use force in the contemporary era have typically failed to satisfy this principle or to meet the strict limits on presidential power prescribed by the Constitution. The challenge for reform is to recreate a constitutionally viable arrangement which also serves the political interests of a critical mass of officials, sufficient to impose it despite the objections of those who see their interests lying elsewhere. In this process, it should not be assumed that presidents might not see some political value in reform if new restrictions are viewed as spreading the responsibility and risk of war, but still allowing the executive sufficient freedom of action.

Absent a protracted and unpopular war, the common assumption that the president can, should, and always has decided on matters of war and peace will be difficult to surmount, after having been firmly entrenched in the public mind for so many decades. Nevertheless, the basic principle guiding the Framers as they drafted the war powers language of the Constitution should remain our guiding light today: "ambition must be made to counteract ambition."[126] The courts cannot be relied upon for remedies; it is the duty of American legislators to summon the political courage to find the remedies for themselves. As Justice Jackson noted in *Youngstown*, "only Congress itself can prevent power from slipping through its fingers."[127]*

[125] James Madison in Benjamin Fletcher Wright, ed., *The Federalist* (Cambridge, MA: Harvard University Press, 1961), 356.

[126] Ibid.

[127] *Youngstown Co. v. Sawyer*, 343 U.S. 579, 654 (1952).

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Constitutional Courts and Legislative-Executive Relations: The Case of Ukraine

TREVOR L. BROWN
CHARLES R. WISE

There is a primary debate, as yet unresolved, regarding the superiority of presidential or parliamentary regime types for the stability of democratic government. Because qualitative and quantitative analyses have yet to demonstrate definitively whether one regime type is inherently more stable than the other, researchers have branched out in a number of directions. One prominent stream of research examines the role that key intervening factors have in determining regime stability, including the electoral system, federalism, and the role of the prime minister in mixed presidential-parliamentary systems. This stream of research contends that regime stability is a function of the interplay of the specific distribution of powers between the legislative and executive branches and these other intervening factors. In this paper, we identify a fourth important intervening factor—constitutional courts. Specifically, we examine the constitutional court in the transitioning nation of Ukraine to demonstrate the role that judicial institutions can play in mediating legislative-executive conflict and thereby contributing to regime stability.

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This article is divided into five sections. In the first section, we briefly review the existing literature on presidential versus parliamentary systems and regime stability. In the second section, we turn to the emerging literature on constitutional courts and discuss how constitutional courts can mediate conflict between the legislative and executive branches. In the third section, we provide background on the specific case for analysis—Ukraine's constitutional court. In the fourth section, we analyze the role that Ukraine's constitutional court has played in mediating conflict between the president and the parliament. To begin, we review the court's decisions since its inception in 1997 in which either the president or the parliament initiated the case and in which separation of powers issues were at stake. We use these cases to determine whether the court has been evenhanded in its decision making in separation of powers issues. Then, to assess the legitimacy of the court and its decisions, we analyze both interview and survey data to examine the attitudes of the president's representative to the court and of parliamentary deputies about the role of the constitutional court. In the concluding section, we discuss the implications of the Ukraine case for ongoing research on presidential versus parliamentary regimes, legislative-executive relations, and regime stability.

Presidential versus Parliamentary Regimes

For some time, scholars and policy makers have engaged in a discussion about the superiority of two democratic regime types—presidential versus parliamentary—in terms of regime stability.[1] Juan Linz[2] and Donald Horowitz[3] frame the debate over the two ideal regime types most clearly. Linz, in support of parliamentary systems, and Horowitz, in support of presidential systems, identify the failures and propensity to instability of the alternative systems.[4]

Linz identifies a number of flaws with presidential systems, including the possibility of an unrepresentative election result, the high probability of legislative-executive gridlock leading to instability, and the propensity of presidential regimes to use instability to justify moves toward authoritarianism. In response, Horowitz argues that parliamentary governments are equally prone to instability and points to a variety of examples in Asia and Africa, and notes the prob-

[1] See Theodore J. Lowi, "Presidential Democracy in America: Toward the Homogenized Regime," *Political Science Quarterly* 109 (Special Issue 1994): 401–440; Mauro Calise, "The Italian Particarcy: Beyond President and Parliament," *Political Science Quarterly* 109 (Special Issue 1994): 441–480; Leon Epstein, "Changing Perception of the British System," *Political Science Quarterly* 109 (Special Issue 1994): 483–513.

[2] Juan Linz, "The Perils of Presidentialism," *Journal of Democracy* 1 (Fall 1990): 51–69.

[3] Donald Horowitz, "Comparing Democratic Systems," *Journal of Democracy* 1 (Fall 1990): 73–79.

[4] Other good treatments of the basic debate over presidential and parliamentary systems include Sergio Fabbrini, "Presidents, Parliaments, & Good Government," *Journal of Democracy* 6 (July 1995): 128-138; Juan Linz, *Problems of Democratic Transition and Consolidation* (Baltimore, MD: The Johns Hopkins University Press, 1996), 66–86; and Giovanni Sartori, *Comparative Constitutional Engineering* (New York: New York University Press, 1997), 173–194.

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lems faced by the Fourth Republic in France. Horowitz also notes that in Westminster systems, majority parties can dominate both government and parliament, with little access for opposition parties.

Empirical research has yet to validate definitively the claims of either Linz or Horowitz. On the one hand, studies by Alfred Stepan and Cindy Skach and by Adam Przeworski et al. find support for the claim that pure parliamentary systems increase the likelihood of democratic stability.[5] Similarly, in a survey of the literature on regime choice and democratic stability, Doh Shin finds a general consensus among scholars in favor of parliamentary over presidential systems.[6] However, Shin identifies a number of studies that suggest that presidential systems can be equally stable. Most recently, a study by Timothy Power and Mark Gasiorowski finds no superiority for the parliamentary form. In sum, the empirical results are mixed and inconclusive.[7]

Given the inability of empirical research to validate the claims of either side, a number of different research streams have emerged that seek to demonstrate how regime types influence the stability of democracy. One stream has identified mixed variations on the basic presidential or parliamentary classification.[8] Although this stream describes the complexity of regime types well, it does not successfully identify a causal mechanism that links a specific type of regime to stability. A second stream of research attempts to address this problem by focusing on the specific division of constitutional authority between the executive branch and the legislature, regardless of whether the system is pure parliamentary, pure presidential, or mixed.[9] This stream identifies the institu-

[5] Alfred Stepan and Cindy Skach, "Presidentialism and Parliamentarism in Comparative Perspective" in Juan Linz and Arturo Valenzuela, eds., *The Failure of Presidential Democracy* (Baltimore, MD: The Johns Hopkins University Press, 1994), 119–136. Adam Przeworski, M. Alvarez, J. Cheibub, and Fernando Limongi, "What Makes Democracies Endure?" *Journal of Democracy* 7 (January 1996): 39–55.

[6] Doh Shin, "On the Third Wave of Democratization," *World Politics* 47 (October 1994): 135–170.

[7] Timothy Power and Mark Gasiorowski, "Institutional Design and Democratic Consolidation in the Third World," *Comparative Political Studies* 30 (April 1997): 123–155.

[8] See Giovanni Sartori, "Neither Presidentialism nor Parliamentarism" in Juan Linz and Arturo Valenzuela, eds., *The Failure of Presidential Democracy* (Baltimore, MD: The Johns Hopkins University Press, 1994), 106–118; Guillermo O'Donnell, "Delegative Democracy" in Larry Diamond and Marc F. Plattner, eds., *The Global Resurgence of Democracy* (Baltimore, MD: The Johns Hopkins University Press, 1996), 94–108; Paul Kubicek, "Delegative Democracy in Russia and Ukraine," *Communist & Post-Communist Studies* 27 (December 1994): 423–441; Phillip Roeder, "Varieties of Post-Soviet Authoritarian Regimes," *Post-Soviet Affairs* 10 (January 1994): 61–101; Gerald Easter, "Preference for Presidentialism: Post-Communist Regime Change in Russia and the NIS," *World Politics* 49 (January 1997): 184–211.

[9] See Peter Ordeshook, "Institutions and Incentives," *Journal of Democracy* 6 (April 1995): 46–60; James McGregor, "The Presidency in East Central Europe," *RFE/RL Research Report* 3 (January 1994): 23–31; Matthew Shugart and John Carey, *Presidents and Assemblies* (Cambridge: Cambridge University Press, 1992, 1–316); John Carey and Matthew Carey, *Executive Decree Authority* (Cambridge: Cambridge University Press, 1998), 274–298; John Ishiyama and Matthew Velten, "Presidential Power and Democratic Development in Post-Communist Politics," *Communist and Post-Communist Studies* 31 (September 1998): 217–233.

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tional incentives that promote conflict and those that promote collaboration between the two branches. A third stream of research builds on the previous stream by examining the role that intervening institutional factors have in determining regime stability, including the electoral and party system,[10] the constitutional division of powers between levels of government,[11] and the powers of the prime minister in mixed systems.[12] This stream contends that regime stability is a function of the interplay between the specific distribution of powers among the legislative and executive branches and these other intervening factors. In particular, a strong case has been made that presidential systems are the most stable when presidents have weak legislative powers, parties are few in number, and parliamentary parties are well disciplined.[13] This third stream provides a framework for determining which specific legislative-executive arrangements are likely to be unstable, given other important intervening factors. The findings of this framework are suggestive, but not all-inclusive. As Kent Eaton argues, the next step for research in this vein is to incorporate additional institutional variables in the analysis.[14] We seek to add to this framework by identifying another important intervening variable—constitutional courts. George Tsebelis and a number of other political scientists have identified courts as key "veto" players in a variety of institutional arrangements.[15] As such, courts can play a primary role in either moderating or fueling conflict between other institutional actors.

Constitutional Courts—The Missing Intervening Factor

After repeated criticism about the absence of research on comparative legal systems and judiciaries,[16] numerous scholars have responded with studies from

[10] Scott Mainwaring, "Presidentialism, Multipartism, and Democracy: The Difficult Combination," *Comparative Political Studies* 26 (July 1993): 198–228.

[11] Scott Mainwaring, "Multipartism, Robust Federalism, and Presidentialism: The Case of Brazil" in Scott Mainwaring and Matthew Shugart, eds., *Presidentialism and Democracy in Latin America* (Cambridge: Cambridge University Press, 1997), 55–109.

[12] Thomas Baylis, "Presidents vs. Prime Ministers: Shaping Executive Authority in Eastern Europe," *World Politics* 48 (April 1996): 297–323.

[13] Scott Mainwaring and Matthew Shugart, "Juan Linz, Presidentialism, and Democracy: A Critical Appraisal," *Comparative Politics* 29 (July 1997): 449–471; Scott Mainwaring and Matthew Shugart, "Conclusion: Presidentialism and the party System" in Scott Mainwaring and Matthew Shugart, eds., *Presidentialism and Democracy in Latin America* (Cambridge: Cambridge University Press, 1997), 394–439.

[14] Kent Eaton, "Parliamentarism versus Presidentialism in the Policy Arena," *Comparative Politics* 32 (April 2000): 355–376. Eaton expands the discussion of differences between the two systems beyond regime stability to include policy making and makes a similar argument about the distribution of powers. Eaton argues that the specific distribution of powers between the two branches is the key factor in determining policy outcomes rather than the choice of presidentialism or parliamentarism.

[15] George Tsebelis, "Veto Players and Institutional Analysis," *Governance* 13 (October 2000): 441–474. See also Nicos Alivizatos, "Judges Veto Players" in Herbert Doring, ed., *Parliaments and Majority Rule in Western Europe* (New York: St. Martin's Press, 1995), 566–591.

[16] See Martin Shapiro, "Public Law and Judicial Politics" in Ada Finifter, ed., *Political Science: The State of the Discipline* (Washington, DC: American Political Science Association, 1993), 365–381.

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all over the globe.[17] Most of this growing literature has focused on the organization and powers of courts and the judicialization of politics through the use of judicial review by national high courts.[18] A few scholars in the comparative judicial institutions subfield have examined the role that courts play in the balance of institutional power and regime stability.[19] For example, Georg Vanberg examines the West German constitutional court to test ways in which courts can successfully establish judicial independence from other branches of government.[20] Unfortunately, scholars of developing democracies in the legislative-executive relations subfield have largely ignored the courts. In the section that follows, we recommend expanding research like Vanberg's by including courts—specifically, constitutional courts—in the analysis of comparative legislative-executive dynamics.

Constitutional Courts and the Separation of Powers

Given the recent emergence of so many mixed-regime types, the discussion over which specific institutional arrangement best promotes stability could be cast in terms of the dispersion of power and authority among all national political institutions.[21] In the tradition of Madison, it can be argued that diffusing

[17] See William Kitchin, "Legal Reform and the Expansion of Judicial Power in Russia" in C. Neal Tate and Torbjorn Vallinder, eds., *The Global Expansion of Judicial Power* (New York: New York University Press, 1995), 441–459; Nico Steytler, "The Judicialization of Namibian Politics" in Tate and Vallinder, *Global Expansion of Judicial Power*, 485–511; C. Neal Tate, "The Philippines and Southeast Asia" in Tate and Vallinder, *Global Expansion of Judicial Power*, 463–484; James L. Gibson, Gregory A. Caldeira, and Vanessa A. Baird, "On the Legitimacy of National High Courts," *American Political Science Review* 92 (June 1998): 343–358.

[18] See Herman Schwartz, "The New East European Constitutional Courts," *Michigan Journal of International Law* 13 (Summer 1992): 741–785; Alec Stone, "Abstract Constitutional Review and Policy Making in Western Europe" in Donald W. Jackson and C. Neal Tate, eds., *Comparative Judicial Review and Public Policy* (London: Greenwood Press, 1992), 41–57; Donald P. Kommers, "The Federal Constitutional Court in the German Political System," *Comparative Political Studies* 26 (January 1994): 470–491; Martin Shapiro and Alec Stone, "The Constitutional Politics of Europe," *Comparative Political Studies* 26 (January 1994): 397–420; Susan Sterett, "Judicial Review in Britain," *Comparative Political Studies* 26 (January 1994): 421–442; Mary L. Volcansek, "Political Power and Judicial Review in Italy," *Comparative Political Studies* 26 (January 1994): 492–509; Sarah Wright Sheive, "Central and Eastern Europe Constitutional Courts and the Antimajoritarian Objection to Judicial Review," *Law and Policy in International Business* 26 (Summer 1995): 1201–1233; Cheryl Thomas, "The Attempt to Institute Judicial Review in the Former USSR" in Tate and Vallinder, *Global Expansion of Judicial Power*, 421–440.

[19] C. Neal Tate and Stacia L. Haynie, "Authoritarianism and the Functions of Courts: A Time Series Analysis of the Philippine Supreme Court, 1961–1987," *Law & Society Review* 27 (Summer 1993): 707–739; Christopher Larkins, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," *American Journal of Comparative Law* 44 (Fall 1996): 605–626; Christopher Larkins, "The Judiciary and Delegative Democracy in Argentina," *Comparative Politics* 30 (July 1998): 423–442.

[20] Georg Vanberg, "Establishing Judicial Independence in West Germany: The Impact of Opinion Leadership and the Separation of Powers," *Comparative Politics* 32 (April 2000): 333–353.

[21] Again, Eaton, "Parliamentarism versus Presidentialism," makes a similar argument about legislative-executive arrangements and policy making, 355–376.

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power across institutions contributes to the stability and survivability of democratic systems by making it difficult for any one branch of government, and therefore any one political group, to centralize power.[22] As noted above, much of the research on comparative regimes focuses on the struggle between two primary institutional actors—executives and legislatures. Instability can result from irreconcilable conflict within the legislature (that is, the collapse of the Articles of Confederation of the United States because of divisions within Congress) or conflict between the executive and the legislature (that is, Russia, 1993, when President Boris Yeltsin ordered tanks to fire on the parliament). The cause of regime instability, therefore, can be seen as either intrainstitutional or interinstitutional conflict.

Research has successfully identified steps that can be taken to reduce both kinds of conflict, but it is the latter that is the primary focus of this research because the proliferation of so many mixed-regime types creates numerous opportunities for interinstitutional conflict. Matthew Shugart and John Carey highlight the importance of the constitutional distribution of power between legislature and executive.[23] They argue that there are numerous opportunities for interinstitutional conflict in systems in which executives have extensive legislative powers (typically in the form of decree authority) and share appointment and governing powers with the legislature. Scott Mainwaring and Matthew Shugart note that political parties can play an important integrating role in mixed systems or purely presidential systems. When there are many weakly disciplined parties, there is no mechanism for integrating divided polities. Instead, the existence of numerous parties promotes fracture and cleavage and further contributes to institutional conflict. Parties, however, constitute but one possible institution for mediating interbranch conflict. Courts should be added to this list of potentially important factors that condition stability.

Legislative-executive conflict typically originates in disagreements between the two branches over policy or as a result of personal conflicts between prominent politicians in each branch. In many cases, personal conflicts reinforce policy conflicts. As Mainwaring notes, in the absence of an integrating entity such as a small number of broad-based parties, policy disputes can quickly escalate into disputes over the distribution of power between the two branches as one branch expands its existing powers or exercises new powers.[24] As Vanberg notes, legislative-executive rivalry and conflict create opportunities for constitutional courts to play a mediating role.[25] Constitutional courts can facilitate the establishment of stable relationships between legislative and executive

[22] Charles R. Wise and Trevor L. Brown, "The Separation of Powers in Ukraine," *Communist and Post-Communist Studies* 32 (March 1999): 23–44.

[23] Shugart and Carey, *Presidents and Assemblies*, 131–166.

[24] Mainwaring, "Presidentialism, Multipartism, and Democracy," 22–24; Mainwaring and Shugart, "Juan Linz, Presidentialism, and Democracy," 465–467; and Mainwaring and Shugart, *Presidentialism and Democracy in Latin America*, 405–416.

[25] Vanberg, "Establishing Judicial Independence in West Germany," 334–341.

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branches by defining the actions each can and cannot take vis-à-vis the other. In addition, constitutional courts can contribute to interbranch stability by translating political conflicts into legal problems, legitimating outcomes, and easing the pain of political defeat by defining outcomes in more tranquil judicial language. However, the mere establishment of a court is no guarantee that it will be effective in playing a stabilizing role. If the court is to play a stabilizing role, both the legislative and executive branches must respect its position and decisions. A strong commitment to constitutionalism is an important prerequisite for stable and successful constitutional government.[26] In most rule of law cultures, a written constitution typically sits at the top of the hierarchy of laws, serving as the framework and establishing a set of general values and principles for citizens, elites, and institutions to abide by. Vanberg's analysis of the Western German constitutional court suggests that in the absence of a rule of law culture, two other conditions may be sufficient to secure judicial independence: broad public support for the judiciary or rivalry between the other main political institutions.[27]

Although the rule of law and a strong judicial system are most frequently associated with the powerful Supreme Court of the United States, high national courts and rule of law cultures are now strongly established throughout Western Europe.[28] Despite the fact that most legal systems in Western Europe are civil law systems based on the Roman-Germanic tradition of codes and norms, a hierarchy of laws has emerged in which constitutions sit atop a body of statutes, regulations, and administrative acts. Within this system, constitutional courts have played a major role in upholding or, in many cases, defining the separation of powers in political institutions in Western Europe. Even in Germany, where decision making in practice follows a much more neocorporatist, intergovernmental bargaining model of policy making, the constitutional court has attempted to explicitly clarify and keep separate the policy-making functions of the legislature and the administrative functions of the executive branch.[29]

Like the political crises that precipitated the establishment of constitutional courts in Western Europe, the fall of the Soviet Union in 1991 created similar opportunities in most of the nation states that emerged. Constitutional courts have now been established throughout Eastern Europe and in some of the nations of the former Soviet Union.[30] Given that so many of the nations of the

[26] Daniel P. Franklin and Michael J. Baun, *Political Culture and Constitutionalism: A Comparative Approach* (London: M.E. Sharpe, 1995), 219–232.

[27] Vanberg, "Establishing Judicial Independence in West Germany," 334.

[28] See C. Neal Tate and Torbjorn Vallinder, "Judicialization and the Future of Politics and Policy" in Tate and Vallinder, *Global Expansion of Judicial Power*, 517–528; Sheive, "Central and Eastern Europe," 1201–1202.

[29] Kommers, "Federal Constitutional Court," 479–482.

[30] See Sheive, "Central and Eastern Europe," 1201–1202; Thomas, "Attempt to Institute Judicial Review," 421–425; William Kitchin, "Establishing and Exercising Judicial Review in the Soviet Union: The Beginnings" in Jackson and Tate, *Comparative Judicial Review*, 59–74; and most recently, Herman

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former Soviet Union have chosen mixed parliamentary-presidential systems, constitutional courts can play an important role in resolving disputes between branches of government if presidents and parliaments afford them the opportunity.

Courts and Interbranch Conflict Resolution

Building on the earlier work of Martin Shapiro,[31] C. Neal Tate and Stacia L. Haynie claim that one of the general functions of all high courts is conflict resolution.[32] This conflict resolution function can range from settling civil disputes between individuals to negotiating conflicts between provinces. For the purposes of this research, we focus on the conflict resolution role of high courts in disputes between national political institutions during regime transitions. In the early stages of regime development, the operational powers and authorities of legislatures and executives are often unclear. Even in those instances in which countries have highly prescribed constitutions, the powers of these institutions are ambiguously stated or conflicting. Executives and legislatures (or representative groups within the legislature acting on behalf of the institution) may turn to the constitutional court in order to resolve disputes. Such a step potentially serves to maintain the legitimacy of the constitutional system.

Nonetheless, it is by no means assured that constitutional courts will achieve the acumen necessary for resolving conflicts in an independent and evenhanded manner or the requisite level of legitimacy with the primary political actors that contributes to regime stability and integrity. The experience of the Russian constitutional court serves as a cautionary example. During its first year of operation, the court ruled that the referendum on independence for the Tartar autonomous republic violated the Russian Federation Constitution and ordered the referendum cancelled. The Tartar leaders dismissed the court's decision and conducted the referendum anyway.[33] And during the conflict between President Yeltsin and the parliament in 1993, the court first took the side of the parliament and ruled against the President's statement of intent to break the deadlock between the branches. The court ruled without the President having taken any concrete action or issuing any illegal act. Yeltsin's decree of 21 September 1993 dissolving the parliament was met with the announcement of the court's chief justice that the court considered the President's decree to be unconstitutional and grounds for impeachment. These actions ultimately led

Schwartz, *The Struggle for Justice in Post-Communist Europe* (Chicago: University of Chicago Press, 2000), 1–348.

[31] Martin Shapiro, "Courts" in Fred I. Greenstein and Nelson W. Polsby, eds., *Handbook of Political Science, vol. 5: Governmental Institutions and Processes* (Boston: Addison-Wesley, 1975), 321–365.

[32] Tate and Haynie, "Authoritarianism and the Functions of Courts," 713–717. Tate and Haynie analyze the Philippine Supreme Court's conflict resolution function in terms of civil suits between conflicting parties, whether they are individuals, groups, or organizations.

[33] Robert Sharlet, "The Russian Constitutional Court: The First Term," *Post-Soviet Affairs* 9 (January 1993): 1–39.

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to the resignation of the chief justice and a presidential decree suspending the constitutional court pending the adoption of a new constitution. The decree stated that the court played "a negative, essentially complicit role in the tragic development of events in the city of Moscow on October 3–4, 1993."[34] The court was unsuccessful in mediating the interbranch conflict between the executive and legislative branches in Russia that resulted in the President ordering military action that ended when tanks fired on the parliament and the dissident legislators capitulated. The court was subsequently expanded in 1994 to include additional justices more favorable to the President (although a number of Yeltsin's appointments were rejected by the upper house of the Russian parliament) and reconstituted in a new law passed on 21 July 1994.[35] Nonetheless, the biggest threat to the Russian constitutional court remains the possibility of politicization by political factions, and its future depends on it remaining above the political fray.[36]

As the Russian case demonstrates, the presence of a constitutional court is not enough to guarantee that institutional conflicts can be successfully mediated. Some high courts have a constrained scope of decision making, preventing them from engaging institutional conflict issues. In other instances, judges are beholden either to the legislature or to the executive branch, turning the court into a surrogate of one or the other.[37] Just as legislative and executive institutions are fragile during times of transition, so are courts. Constitutional courts in the former Soviet Union typically lack a history of judicial autonomy. If a high court is to successfully play a mediating role in interbranch disputes, the court's position within the constellation of political institutions must become stable and the court must simultaneously become independent of these institutions.[38] In the absence of these preconditions, the court's legitimacy will be undermined and the court's decisions are unlikely to be respected.

There is a growing body of research on the components and prerequisites of judicial independence.[39] Building on the work of Owen Fiss[40] and Christopher

[34] The decree was published in *Rossiiskaya gazeta*, 9 October 1993.

[35] Gordon B. Smith, *Reforming the Russian Legal System* (Cambridge: Cambridge University Press, 1996), 1–325.

[36] Ibid., 275–283.

[37] Larkins, "Judiciary and Delegative Democracy," 436–437. Larkins argues that in 1989, Argentine President Carlos Menem succeeded in inducing independent-minded justices to retire and appointed more authoritarian-minded justices to the court. In this way, the court became a mechanism for legitimizing Menem's power grab, although in the end, the court's legitimacy and the rule of law were tarnished.

[38] Robert Dahl, "Decision Making in a Democracy: The Supreme Court as a National Policy Maker," *Journal of Public Law* 6 (1957): 279–305. In an analysis of the decisions of the U.S. Supreme Court, Dahl highlights the political tightrope the Court must walk in order to maintain its position among the other two branches.

[39] The American Bar Association's Division for Public Education has produced a concise summary of the research on judicial independence, both in the United States and comparatively, in *Judicial Independence: Essays, Bibliography, and Discussion Guide* (1999).

[40] Owen Fiss, "The Right Degree of Independence" in Irwin P. Stotzky, ed., *Transition to Democracy in Latin America: The Role of the Judiciary* (Boulder, CO: Westview Press, 1993), 55–72.

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Larkins,[41] Donald Jackson identifies a number of characteristics of high courts that determine their degree of independence and consequently their ability to perform a mediating role between legislatures and executives.[42] In summarizing Fiss, Jackson contends that "the highest level of judicial independence may be achieved by judges who are detached and neutral toward the parties before them, who have sufficient individual autonomy to make their own decisions based on the law and the facts in a case, and who are insulated from any form of partisan influence or control."[43]

One of the primary factors identified by this growing body of research is the process through which judges are appointed. At the most basic level of analysis, when one institution has the exclusive authority to appoint justices, or is clearly dominant in the process, the judiciary is likely to be beholden to that institution. Alternatively, if one institution has the exclusive power to remove a justice, for whatever reason, a similar effect is likely. Although the justices of the U.S. Supreme Court are assured judicial independence through lifetime tenure and an appointment process that is shared between the executive and the legislative branches, justices on most European courts have term limits. For instance, German justices have a twelve-year term limit.[44] In addition, most European nations afford each national political institution the power to appoint a set number of justices. For instance, in France[45] and Romania,[46] the president and each house of parliament have the power to appoint three justices, for a total of nine justices, to the high court. This system of distributing appointments across national political institutions is sufficient to ensure judicial independence as long as appointments are equally divided across the institutions and no institution can force current justices to resign. Appointments are not objective in a pure sense but are inclusive of institutional viewpoints at the appointment stage, thus giving each branch of government a stake in the process of appointment and a reason to support the legitimacy of the process. Concomitantly, the inability of one branch to remove justices provides confidence that judges will not make decisions on the basis of loyalty to one branch or another in interbranch disputes.

Two additional factors relevant to the courts' ability to perform conflict resolution functions are jurisdiction and powers of review. If a high court is to have influence over institutional disputes, generally speaking, its jurisdiction must

[41] Larkins, "Judicial Independence and Democratization," 605–626.

[42] Donald Jackson, "Judicial Independence in Cross-National Perspective," *Judicial Independence: Essays, Bibliography, and Discussion Guide* (Washington, DC: American Bar Association, 1999), 8–12.

[43] Ibid., 9.

[44] Stone, "Abstract Constitutional Review," 42–46.

[45] Ibid., 42–46.

[46] Florin Vasilescu, "The Role and Competences of the Constitutional Court," in *The Role of the Constitutional Court in the Consolidation of the Rule of Law* (Council of Europe, 1994), 33–45; Victor Dan Zlatescu, "Organization, Operation and Practice of the Constitutional Court" in *Role of the Constitutional Court*, 56–69.

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be broad. Legislative-executive conflicts do not always center directly on the distribution of powers. Instead, it is just as likely that institutional dispute issues arise as a result of conflict over policy. Consequently, the court must have purview over a wide range of policy issues in order to play a role in sorting out responsibilities. At the same time, some nations explicitly assign courts, by law or the constitution, the authority to resolve disputes between the legislature and the executive branch. This assures the court a direct avenue into institutional disputes.

In terms of powers of review, at this preliminary stage, we argue that constitutional courts must have the power of judicial review—the power to declare a law or decree null and void. In addition, the decisions of the court must have an ergo omnes effect (that is, when a statute or administrative act is declared unconstitutional, it no longer has a legal effect). If the court does not have the authority to void laws and acts it determines to be unconstitutional, then the court has no real tools with which to check the legislature or executive branch if they take actions beyond their constitutionally prescribed powers.

In the next sections, we turn to the case of legislative-executive conflict in Ukraine. Ultimately we use the Ukrainian case to exemplify the mediating role constitutional courts can play and to highlight the need to incorporate constitutional courts as intervening factors in determining the stability of various democratic regime types. We examine the degree to which the specific factors of importance for judicial independence are present to determine if Ukraine's constitutional court achieves the threshold of judicial independence suggested by Jackson.

Ukraine's Constitutional Court and the Separation of Powers

It has been argued that the task of establishing the rule of law in the countries of Central and Eastern Europe and the former Soviet Union is of a sui generis nature; the task occurs within the context of drastic political changeover, total economic restructuring, the establishment of new institutions, and a complete intellectual and moral reconstruction.[47] For nations within the former Soviet Union, political changeover has meant systemic breakdown, the emergence of soft states, weak institutions, and marooned legal institutions.[48] With regard to this last constraint, Moscow had been the center of the Soviet legal system in the USSR, with the capabilities for legal drafting, judicial training, and procuratorial training. With the collapse of the USSR, Russia retained the responsible legal institutions, and the other former Soviet states were left with few capabilities for drafting the required new laws or for training legal personnel.

[47] Csaba Varga, "Transformation to Rule of Law from No-Law: Societal Contexture of the Democratic Transition in Central and Eastern Europe," *Connecticut Journal of International Law* 8 (Spring 1993): 487–504.

[48] Robert Sharlet, "Variables of Legal Transformation in the Newly Independent States," *Rule of Law Consortium Newsletter* 10 (Winter 1997): 16–18.

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At the point of independence, Ukraine plunged into a process of simultaneous political and economic reform. A major overarching challenge in both arenas was to establish the rule of law as the operating framework for political and economic activity in place of party and nomenklatura rule. However, in order to begin a rule of law system in Ukraine, a number of major legal initiatives had to be undertaken simultaneously. These included: drafting and adopting whole new bodies of statutory law, such as a civil code, commercial code, bankruptcy law, media law, etc.; overhauling the judicial system and training judicial personnel, including judges; reallocating legal responsibilities, particularly among the procuracy, ministry of justice, and the courts; and establishing constitutionalism and the habits of constitutionalism both among those in the governing class and among the populace.

There is little history of independence from which Ukraine's fledgling judiciary can draw. Under Soviet rule, the judiciary was subordinated to the Communist party, which exercised its control through the procuracy, an administrative office of the central government. The responsibility of judges was not to interpret law objectively but to ensure that decisions conformed to current party doctrine. In order to ensure compliance, the procuracy had the authority of "general supervision of legality," or the ability to review and annul any court decision. Because judges acquired their jobs through the party and had their decisions routinely scrutinized by procurators, judges had very little discretion. Since independence, steps have been taken to create an independent judicial system in Ukraine separate from the political branches of government. Similar steps have been taken in Russia, where a debate is ongoing over how to reduce the scope and influence of the procuracy.[49] In particular, in 1991, the Ukrainian parliament took a major step forward through the passage of the Law on the Status of Judges. This law explicitly separated the judiciary from the Communist party and the procuracy and laid the foundation for independence. Despite this achievement, during the passage of Ukraine's constitution, debate continued over whether judicial power should be concentrated exclusively in the judiciary or whether the procuracy should retain some power to review judicial decisions. As discussed below, although the constitution did not fully end debate over this central issue, it contributed to creating a legal framework for an independent judiciary.

In June of 1996, Ukraine became the last of the former Soviet republics to pass its own constitution.[50] Under the constitution, Ukraine's existing judicial system was combined into a Court of General Jurisdiction, responsible for enforcing criminal law and, eventually, the civil code.[51] A number of specialized courts operate under the Court of General Jurisdiction, including specialized economic courts, responsible for resolving disputes between commercial enti-

[49] Smith, *Reforming the Russian Legal System*, 275–283.

[50] See Wise and Brown, "The Separation of Powers in Ukraine," for a detailed discussion of why Ukraine delayed so long in passing a constitution.

[51] Ukraine is still in the process of establishing a civil code.

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ties, and military courts. The system is organized hierarchically, with courts at the national, regional, and district levels. The constitution also created a constitutional court separate from the Court of General Jurisdiction. Ukraine's constitutional court was not fully operational until well into 1997 because Ukrainian political elites argued that a court could not be established until a constitution was passed.

By creating a separate and autonomous judicial institution, nations that create constitutional courts seek to give special emphasis to the protection of the constitution and arguably to the protection of democracy and the rights of citizens. Unlike the U.S. Supreme Court, constitutional courts in this region are designed to participate in interbranch political relations—not to stand apart from them. In contrast to U.S. practice, the justiciability provisions in many constitutional courts in Central and Eastern Europe and the former Soviet Union are designed not to impede but to encourage judicial resolution of volatile political disputes.[52] C. Neal Tate and Torbjorn Vallinder refer to the "judicialization of politics and policy," whereby actions of courts become a central part of political decision making.[53] Although some political analysts see this judicialization as a function of the assertiveness of courts, in the constitutional court setting, the political issues are pressed on the court by functions assigned in the constitution and laws and by parties in the executive and legislative branches seeking to use the court as an alternative venue for political maneuvering.

Such is the case in Ukraine, where central government politics have been characterized by an intense struggle between the president and the parliament.[54] For example, the 1996 constitution provided the president with a very strong position, with much control over the ministries and the power to issue decrees that have the force of law if they are not overturned by vote of the parliament. The achievement of an agreement on the content of the constitution only came after the President threatened the parliament with a public referendum on a constitutional draft that was even more president-centered than the one finally adopted. As a result of compromise necessary to achieve passage, the constitution as written contains some significant ambiguities, particularly concerning the respective powers of the president and the parliament in a variety of domains. These ambiguities provide fertile ground for potential clashes over the distribution of power. In addition, the President and the parliament were deeply split regarding major policy directions for the country. The left-dominated parliament resisted many of the policies pushed by the President to transform the country into a market economy with a large role for private ownership. In many ways, the interbranch divide was the same as that witnessed in Russia.

[52] Schwartz, "New East European Constitutional Courts," 770–775.

[53] Tate and Vallinder, "Judicialization and the Future of Politics and Policy," 515–528.

[54] Wise and Brown, "Separation of Powers in Ukraine," 28–42.

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The challenges for Ukraine's constitutional court are to establish its position in the constellation of Ukrainian governmental institutions, to fulfill its responsibilities as an arbiter of constitutional disputes without becoming embroiled too deeply in the politics of the day, and to become an effective regulator of interbranch conflict. There are several risks faced by the court. One risk is that it could become viewed as a nonentity in terms of serious matters of state and its decisions could become regarded as having no force. Another risk is that the constitutional court could become politically entwined, becoming just another political player and not the paramount judicial institution. The constitutional court faces another challenge in that it starts from a position of disadvantage. The Ukrainian courts in general do not enjoy much popular legitimacy, which is a hangover from the populace's experience with courts that were not independent but were under party direction during Soviet times. Consequently, the court must lay a foundation of legitimacy upon which it can build. In sum, the constitutional court begins its work in the context of numerous unsettled separation of powers disputes, without a strong institutional or popular base of support.

Jurisdiction, Appointment, and Judicial Review

Ukraine's constitutional court is composed of eighteen justices.[55] The president, the parliament, and an assembly of judges each appoint six justices. As noted earlier, distributing appointments across national political institutions is sufficient to ensure judicial independence, as long as appointments are equally divided across the institutions and no institution can force current justices to resign. Such is the case in Ukraine. All of the justices, except one, have a degree in law, and the majority of justices have academic experience teaching law. Twelve of the eighteen justices have substantial experience participating in the drafting of legislation; in fact, many of the justices helped draft Ukraine's constitution. As expected, all of the justices appointed by the assembly of judges, but none of the justices appointed by the other two bodies, have previous judicial experience. Four of the justices appointed by the President have experience working in executive structures, and four of the justices appointed by the parliament have experience working in legislative administrative positions.[56]

[55] In the analysis for this section, we have benefited from access to multiple data sources in researching the development of Ukraine's constitutional court. Primary sources include Ukraine's 1996 constitution (English version available at http://www.rada.kiev.ua/const/conengl.htm), *The Regulations of the Constitutional Court of Ukraine* (translated by the American Bar Association, summer 1997), and select cases of the constitutional court (a subsequent footnote references the specific cases analyzed). Much of our research is also based on interviews with Ukraine's first citizen plaintiff of the constitutional court, Oleksandr Barabash (15 November 1997), the final appointment to the bench of the constitutional court, Mykola Korniyenko (16 June 1997 and 18 November 1997), and the President's Representative to the Constitutional Court, Vladimir Nosov (29 July 1998). All interviews were conducted either by a native Ukrainian speaker or with the translation of a native Ukrainian speaker.

[56] *Visnyk of the Constitutional Court of Ukraine* 1 (Kiev, Ukraine: Publication Department of the Constitutional Court, 1997), 2–37.

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The leadership of the court consists of a chairman and two deputy chairmen. The chairman is elected by secret ballot for a single three-year term at a special plenary session. The court has a legal staff that includes law clerks and a secretariat that attends to the administration of the court's operations, as well as an active press service that prints the decisions of the court.

On paper, Ukraine's constitutional court is arguably one of the strongest in Europe. The court enjoys both a priori and a posteriori abstract review as well as concrete review of cases in which the law has been applied. The sheer number of political entities that can submit cases underlines the political nature of the court's position. The president, the cabinet ministers, the prime minister, the parliament of Crimea (a semiautonomous region in southern Ukraine), groups of at least forty-five deputies of the parliament, the supreme court, the parliament's representative on human rights, and individual citizens all enjoy the authority to submit cases to the court. Cases submitted by political actors such as the president or a group of deputies typically revolve around whether an action by a particular branch of government, or a specific law or edict, is constitutional. Article 150 of the constitution explicitly gives the court the authority to determine whether legal acts promulgated by the parliament, the president, or the cabinet ministers are constitutional. Thus, the official provisions for the court's foundation place it in the role of arbiter of high politics. According to Justice Mykola Kornienko, the court is highly cognizant of its potential role as arbiter between feuding political branches. Justice Kornienko states: "One of the primary criteria for determining which constitutional cases to accept is the identity of the petitioner. We accept all cases brought forth by the President or sufficient members of parliament that involve constitutional disputes." Justice Kornienko goes on to argue that on the basis of his experience, the constitutional court sees playing the role of arbiter as one of its most crucial functions.[57]

In Ukraine, the ability of the court to play this mediating function is perhaps all the more important in that Ukraine, like most other parliaments of the former Soviet Union, lacks a viable multiparty system. The key to the emergence of a viable multiparty system in Ukraine is the same as for the other countries of the former Soviet bloc—the generation by the parties of a national structure that can sustain regular electoral competition, generate meaningful policies, and sustain parliamentary representatives.[58] The lack of a viable multiparty system has meant that the parties in government are not able to bridge the gaps between the executive and legislative contenders for power, in that neither the president nor the prime minister commands a major party ruling coalition. The parties, with the exceptions of the Communists and the small rightist parties, are not connected to ideologies or consistent policy positions, and the legisla-

[57] Justice Mykola Kornienko, interview with Trevor L. Brown and Charles R. Wise, 16 June 1997.

[58] Stephen White, Graeme Gill, and Darrell Slider, *The Politics of Transition* (Cambridge: Cambridge University Press, 1993), 212–273.

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tive system does not force the formation of party coalitions to undergird the government.

With most of Ukraine's parliamentary history since independence dominated by conflict between a president bent on control of the economy and the regions and dedicated to introducing private property and market measures and a parliament dominated by the left and resistant to market capitalism, the early period of interbranch relations was characterized by repeated clashes over fundamental governmental prerogatives and overall control, which precluded focus on meaningful policy change and regime stability.[59] Only when the constitution specified that there would be a constitutional court and the branches agreed on their respective appointees was there even the prospect that a visible and regularized venue would exist for resolving interbranch political contests. The questions were whether the court would be effective in addressing major points of contention and whether its decisions would be perceived by the combatants as legitimate.

In terms of its ability to play a significant role in mediating legislative-executive conflict, Ukraine's constitutional court passes the thresholds of each of the components identified earlier: it has extensive judicial review powers, its jurisdiction is broad enough to encompass most separation of powers issues, and neither the president nor the parliament can easily command control of the court through the appointment process. Two questions must be examined in order to determine whether the court is able to use its institutional capacity to successfully mediate conflict and play a stabilizing role in Ukraine's nascent separation of powers system: first, will the court be evenhanded in its decision making in practice and act as a balance in the separation of powers and, second, will the court's decisions be accepted and respected by the executive branch and the legislature? Because appointments to the court are distributed evenly across national political institutions and justices have a fixed term in office, no one institution has undue sway over the court's decision makers. Consequently, our expectation is that the court will be evenhanded in its decision making. However, the lack of a historical tradition of a strong and independent judiciary in Ukraine suggests that the initial hypothesis should be that the court and its decisions will not be respected by either the president or the parliament, in spite of its institutional design. In the next section, we examine a variety of types of evidence to assess this hypothesis.

Ukraine's Constitutional Court and Legislative-Executive Relations

To assess whether Ukraine's constitutional court will be able to successfully mediate conflict and play a stabilizing role in Ukraine's nascent separation of

[59] Charles R. Wise and Volodymyr Pigenko, "The Separation of Powers Puzzle in Ukraine: Sorting Out Responsibilities and Relationships between President, Parliament, and Prime Minister" in Taras Kuzio, Robert Kravchuck, and Paul D'Anieri, eds., *State and Institution Building in Ukraine* (London: Macmillan, 1999), 25–55.

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powers system, we turn to two preliminary sources of data. First, we review the court's decisions, since its inception in 1997, in which either the president or the parliament initiated the case and in which separation of powers issues were at stake. We use these cases to determine whether the court has been evenhanded in its decision making on separation of powers issues. Second, to assess the legitimacy of the court and its decisions among political elites, we examine the attitudes of the president's representative to the court and of parliamentary deputies concerning the role of the constitutional court.

Assessing the Evenhandedness of the Court's Decision Making

In terms of the court's early decision making, we examined separation of powers cases from the court's inception in 1997 through the first quarter of 2000. We selected cases for detailed analysis on the basis of two criteria: first, either the president or the parliament had to bring the case for review to the court; second, the case had to address a primary separation of powers issue in which both branches of government were involved. Typically, the selected cases involved direct disputes between the president and the parliament. In one or two instances, the cases involved a dispute between the parliament and the cabinet ministers, but one in which the president had a direct stake in the case as the head of the government. Some of the cases were tied to specific policy issues, but still had important implications for separation of powers issues. Fourteen cases met these two criteria during the three-year period.

Through analysis of the separation of powers issues at stake and the decision of the court in each case, we coded each case into one of five categories, according to which branch had its claims endorsed as a result of the resolution: full presidential, partial presidential, mixed, partial parliamentary, and full parliamentary. "Full presidential" indicates that the court decided all or almost all of the separation of powers issues at stake in the case in favor of the president. Similarly, "full parliamentary" indicates that the court decided all or almost all of the separation of powers issues in favor of the parliament. When the court decided most of the separation of powers issues, but not all, in favor of one branch or the other, the case was coded as either "partial presidential" or "partial parliamentary," depending on which direction the court leaned. Finally, in two instances, the court produced balanced decisions in terms of separation of powers or decided in favor of one branch on one separation of powers issue and in favor of the other branch on another separation of powers issue. These cases were coded as "mixed." Figure 1 reports the summary results of this analysis.[60]

[60] This analysis was based on a review of the fourteen separation of powers cases heard by the court since its inception in 1997. Because of constraints on space, the full analysis of these cases is not included in this article. All cases and the authors' analysis of the cases are available upon request from the authors. The following cases of Ukraine's Constitutional Court were analyzed: #N 03/29-97; #01/1909-97; #01/34-97; #03/690-97; #1-26/98; #1-15/98; #01/1501-97; #03/2444-97 1-988; #01-19/98; #01-29/98; #01-18/99; #01-19/99; #N 1-91/2000; #N 1-21/2000; and #N 1-27/2000. These cases were translated by Natalia Rijova, a native Ukrainian speaker and former employee of the Parliamentary Development Project.

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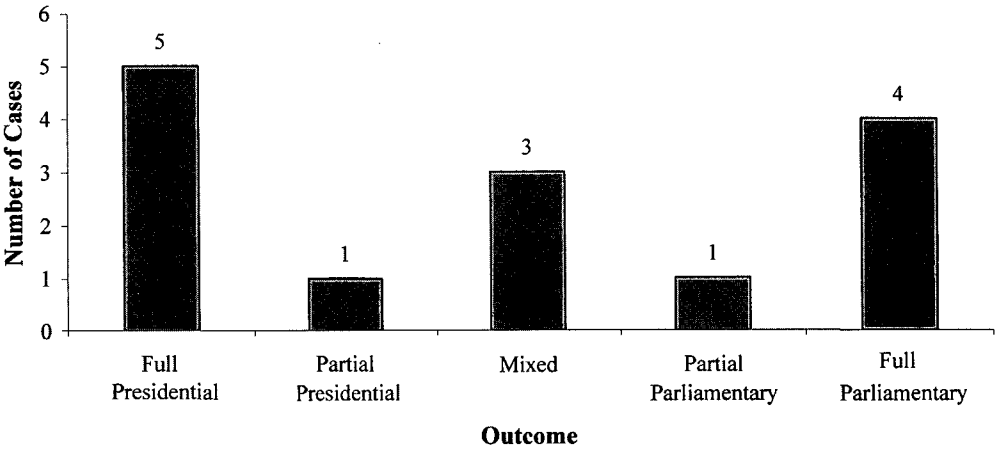
FIGURE 1
Distribution of the Court's Separation of Powers Decisions



As Figure 1 shows, the court has been relatively balanced in its decision making. Rather than repeatedly favoring one branch over the other, the court has ruled in the president's favor in some cases and in the parliament's favor in others. In order to provide the reader insight into the court's reasoning in addressing separation of powers issues, we provide brief descriptions of representative cases from the three primary categories: full presidential, full parliamentary, and mixed. As should be apparent, these decisions are not peripheral, but centrally involve the balance of power between the legislative and executive branches.

Full presidential—the Accounting Chamber.[61] Soon after the formation of the constitutional court, the President asked the court to rule on the constitutionality of the law of Ukraine "On the Accounting Chamber." This law, passed by the parliament of Ukraine two weeks after the passage of the constitution, created a body, the Accounting Chamber, subordinate to the parliament but with the power to oversee the use of state-owned property, the privatization process, monetary emissions, the granting of loans to other countries, the use of credits and loans from foreign countries, and the use of gold and hard currency reserves.[62] The law also gave the chamber the authority to investigate the finances of local government bodies and nonstate public organizations. At issue was whether the powers afforded to the Accounting Chamber were constitutional in light of Article 98 of the constitution, which states that "oversight of the utilization of fiscal resources of the State Budget of Ukraine is conducted

[61] Case #01/1909-97 heard on 11 July 1997 and Case #01/34-97 heard on 23 December 1997.

[62] As originally structured, the Accounting Chamber performed functions similar to the General Accounting Office (GAO) in the United States.

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by the Accounting Chamber on behalf of the Supreme Rada of Ukraine." The separation of powers issue entailed how much power the parliament would have not only to oversee the financial decisions of the government, but also, in some cases, to control financial decisions.

In two separate decisions, the constitutional court decided in favor of the president and significantly reduced the powers of the Accounting Chamber. The court ruled that according to the constitution, the Accounting Chamber only had the authority to oversee budgetary spending. The court struck down the articles in the law that gave the Chamber control over sources of budget revenues and wide-ranging powers to investigate public and private financial institutions. The court also removed the immunity from criminal prosecution enjoyed by Accounting Chamber employees and revoked the Chamber's authority to seize documents and accounts of organizations and businesses without a court-issued warrant. Finally, the Court remanded the law back to the parliament, specifying that the law needed to be rewritten in order to come into compliance with the constitution.

The decision constrained what clearly was an overreach by the parliament while recognizing and preserving the parliament's powers of budgetary oversight. Failure to achieve such a balance could easily have led to one branch or another perceiving that the remaining law constituted a fundamental invasion of its power, exacerbating interbranch conflict. Instead, the Accounting Chamber law was rewritten and was accepted by the two branches.

The Accounting Chamber operates today as an appropriate parliamentary auditing body, adding to the parliament's oversight capacity. The President has accepted the modified Accounting Chamber, and the Chamber regularly audits departmental activities and programs. Major clashes over the authority of the Accounting Chamber to obtain information held by executive branch agencies have largely been avoided, and the parliament has not tried to force the issue of using it as a tool to invade the decision-making prerogatives of the executive branch.

Full parliamentary—subnational appointments.[63] Shortly after the Accounting Chamber case, deputies of the parliament petitioned the court regarding the constitutionality of the presidential practice of appointing the deputy directors of oblast (regional) and Kiev state administrations from July through December of 1996 and during January of 1997. The petitioning deputies argued that the President had overstepped his appointment authority because Article 118 of the constitution gives the directors of state administrations the authority to appoint administrative staff, and the authorities of the president specified in Article 106 of the constitution do not include appointing deputy directors of state administrations. The President argued that according to Presidential Decree N 760, promulgated on 21 August 1995, he had the authority to appoint

[63] Case # 03/690-97 heard on 24 December 1997.

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and dismiss deputy directors. The key separation of powers issue at stake was how much authority the president had over the appointment and control of subnational government units.

The constitutional court ruled for the deputies, arguing that the appointment powers specified in Presidential Decree N 760 were unconstitutional. The court argued that the constitution does not give the president the power to appoint deputy directors of state administrations at any subnational level of government and this authority resides instead with state administration directors. In response, the President respected the decision and withdrew his appointments. Following the withdrawal of the President's appointments, local governments made the decisions about deputy directors. The appropriate boundaries of presidential control of the intergovernmental system had long been a point of contention between the parliament and presidents, and the acceptance of this decision establishes the principle that the constitutional court can arbitrate legislative-executive disputes in the intergovernmental sphere.

Although this decision has not eliminated interbranch conflict over the intergovernmental system, it has established boundaries on where the battle will take place. Since the decision, the struggle for control over local governments has shifted from personnel appointments to intergovernmental financing. Recently, the parliament passed a budget code that establishes formula-based financing of local governments. In the months ahead, the president and the parliament are likely to struggle over how the financing formula will be structured.

Mixed—referendum.[64] In early 2000, 211 deputies of the parliament requested that the court review the constitutionality of a presidential decree that called for a national referendum to be held on 16 April 2000. Several of the referendum questions dealt with changes to the constitution, many of which could potentially alter the distribution of power between the branches. The deputies argued that the proposed referendum was unconstitutional because it violated procedures for changing the constitution established in Article 19 of the constitution. The President argued the opposite, claiming that the constitution gave the president the power to conduct a national referendum as a result of an initiative of the people. The President argued that the constitution and the "Law of Ukraine on National Referenda" allow the president to conduct a referendum on changing the constitution. Furthermore, the President argued that the results of the referendum, because they represent the will of the people, must be incorporated directly into the constitution. The primary separation of powers issue entailed the authority of the president vis-à-vis the parliament to conduct national referenda on the distribution of power between the branches.

In its opinion, the court began by clarifying the power of each branch in the referendum process. The court argued that the constitution specifies that the parliament has the exclusive authority to conduct referenda on changes to

[64] Case #N 1-27/2000 heard on 27 March 2000.

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the territory of Ukraine, while the president has the exclusive authority to conduct referenda on changes to the constitution. Furthermore, the court argued, the constitution stipulates that the president has the authority to conduct referenda if at least three million Ukrainian citizens demand the referendum. Consequently, the court decided that the president had the authority to conduct the referendum.

Although the court decided in favor of the President on this important issue, the court made several other more balanced decisions regarding the content and implementation of the results of the referendum. Of the six questions posed in the referendum, the court argued that two of the questions were unconstitutional and therefore could not be included in the referendum. The court eliminated the first question, which called for the potential dissolution of the parliament based on a popular vote of no confidence, and the sixth question, which called for adopting the constitution by referendum. The court argued that because the latter question did not rule out adopting an entirely new constitution, it could weaken the existing constitutional order and was, therefore, unconstitutional.

The court allowed the remaining four questions to be included in the referendum and argued that if any of these questions were approved by a majority of the people, it would be mandatory that changes to the constitution be considered. However, the court declared that to effectively implement the will of the people, any changes to the constitution would have to be undertaken by the president and the parliament in a balanced and cooperative manner. The court stipulated that any questions approved by the people that necessitated changes to the constitution would need to be processed as constitutional amendments. Because the amendment process requires that one session of the parliament initiate the amendment and that the subsequent session approve the amendment, the debate over the exact nature of the constitutional changes would take place within the parliament. So although the President won the right to have many of his referendum questions considered by the people, the parliament retained the authority to process those changes if approved. Thus, the resolution means that both branches retain power in the referendum process and that it cannot be used as a method of bypassing the other branch. It also means that the president cannot use the referendum as a method of dismissing the parliament and taking solitary control of the system of power.

The referendum on the four approved questions was held and all four questions were answered affirmatively by the voters. As a result, the current convocation of the parliament was obliged to begin the process of crafting legislation to bring amendments to the constitution for each of the four questions and did so by creating the Special Commission on Constitutional Amendments, cochaired by First Deputy Chairman of the Parliament, Victor Medvedchuk, and Head of the Presidential Administration, Volodymyr Lytvyn. The Commission has created drafts to address two of the referendum questions. In order to become constitutional amendments, they must receive a constitutional majority

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of 300 votes in the current and subsequent sessions of the parliament. As of this writing, the parliament had passed a draft of these two referendum questions in one convocation, but had failed to take up the drafts in the next convocation and, consequently, must begin the process again. A number of parliamentary factions have raised objections to components of the draft and have indicated that they will not vote for the drafts as written. In response, representatives from the Commission have indicated that each referendum question will require not only an individual draft law but also a package of supplementary laws. All sides have repeatedly made it clear that enactment will be done by means of the normal legislative process in which both the president and the parliament play a role. Thus, while this development portends significant constitutional change, the court's decision has been accepted by both political branches, who are cooperating in implementing the changes. There is no sign that earlier fears that a shift in power brought about by the referendum would be implemented by extraconstitutional means.

Assessing the Legitimacy of the Court and Its Decisions

The previous section demonstrated that, as expected, the court's separation of powers decisions have been balanced. To determine whether these decisions are viewed as legitimate, we now analyze attitudinal evidence from deputies of the parliament and the president's representative to the constitutional court. In 1999, we surveyed parliamentarians of the Fourteenth Convocation of Ukraine's National Parliament about a variety of institutional issues.[65] One of the primary areas surveyed was legislative-executive relations and the role of the constitutional court. Figure 2 reports the responses of survey participants to two questions. The first question asked parliamentarians to indicate how important the constitutional court was to a stable system of separation of powers. The gray bars depict these responses. The second question asked parliamentarians to indicate how effective the constitutional court was in ensuring a stable system of separation of powers. The black bars depict these responses.

As Figure 2 demonstrates, the power of the constitutional court to resolve disputes between the president and the parliament is thought by the majority of deputies to be an important component of the system of separation of powers

[65] The survey of national deputies of the Verkhovna Rada of the Fourteenth Convocation was conducted in Ukraine from 15 January 1999 to 15 April 1999. The survey consisted of over forty-three questions and 150 survey items. Three hundred three deputies participated in the survey, and twenty-one deputies participated in a pretest of the survey the first week of February. The survey consisted of both open-ended and closed-ended questions. The Parliamentary Development Project developed the survey instrument and the Kyiv International Institute of Sociology (KIIS) carried out the interviews. The sample for the survey was drawn from the complete list of Verkhovna Rada deputies from the Fourteenth Convocation. Out of the entire membership of 444 deputies, 303 deputies participated in the survey and twenty-one in the pretest. A sample of this size is sufficiently reliable to generalize to the entire population of deputies with ±1.5% of sampling error.

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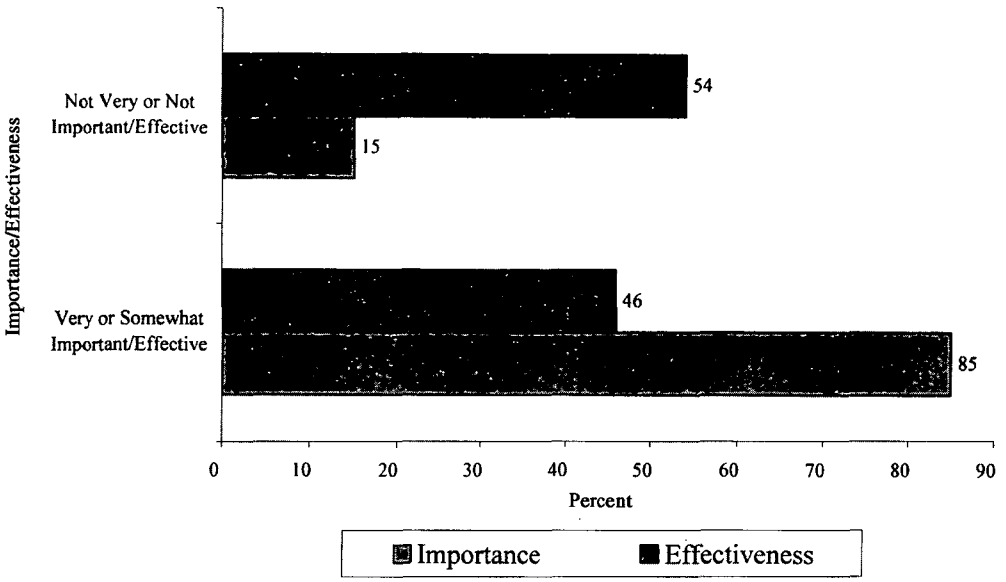
FIGURE 2
Importance and Effectiveness of the Interbranch Dispute Resolution Powers of the Court



Note: Effectiveness, n = 266. Importance, n = 280.

in Ukraine. Eighty-five percent of respondents said that this role of the constitutional court was "somewhat important" or "very important." This suggests that deputies view the court as a potential arbiter of disputes, given its institutional design. In terms of its performance, about half of these respondents believe that the court has been effective in this role. We believe that this number is not higher in part because at the time of our survey (early in 1999) the court had been operational only for a little over two years. If the court continues to pass decisions that are balanced and that diffuse interbranch conflict, we expect that the percentage of deputies who think that the court has been effective will increase.

A number of variables were examined to determine whether there were significant differences among various groups in how they viewed the importance and/or effectiveness of the court in resolving interbranch disputes. No significant differences were found with respect to either the importance or the effectiveness of the court among deputies elected on party lists versus those elected from majoritarian districts, deputies who were serving their first term versus those who had served at least one previous term, and deputies with and without leadership positions. However, with respect to the importance of the court's role, there were significant differences according to deputy ideology, with a somewhat higher proportion of those who were members of left-leaning factions responding that the court's role was "not very important" or "not im-

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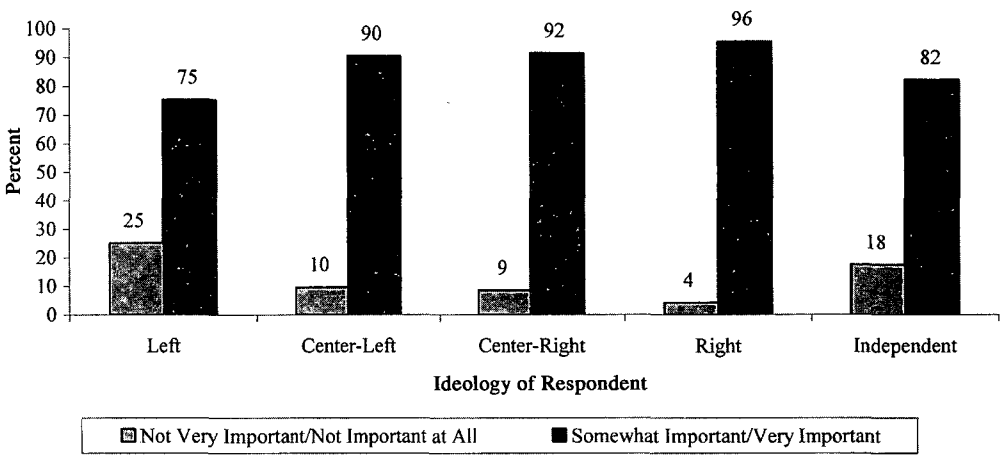
FIGURE 3
Importance of the Constitutional Court in the Separation of Powers by Ideology of Respondent



Note: n = 278.

portant at all," as compared to members of other factions.[66] Figure 3 reports the attitudes of respondents regarding the importance of the court in the separation of powers broken down by ideology.

Still, the differences were not large, with three out of four of the left-leaning deputies saying that the court's role was "very important" or "somewhat important." Even higher proportions of the other deputies saw the court's role as important.

With respect to the effectiveness of the court in resolving disputes, there were larger differences between the left-leaning deputies and deputies from other ideological groups. Figure 4 reports the attitudes of respondents regarding the effectiveness of the court in the separation of powers broken down by ideology.

Although only 28.6 percent of the left-leaning deputies rated the court as very effective or somewhat effective, a majority of the other deputies did so. In part, this could reflect a legacy of the Bolshevik tradition in which the Communists continue to distrust courts per se, and/or it could reflect disappointment on the part of some deputies that the court did not rule more often in the parlia-

[66] We categorized factions along the following ideological spectrum. The left bloc is composed of the Communist party of Ukraine, the Progressive Socialist party, and the Socialist party. The center-left bloc is composed of the Peasant party, the Hromada party, and the Green party. The center-right bloc is composed of the Social Democratic party, the People's Democratic party, the Fatherland party, and the Rebirth of Regions party. The right bloc is composed of two factions of the Rukh party and the Reforms and Order party. Finally, the independent bloc is composed of deputies with no faction affiliation.

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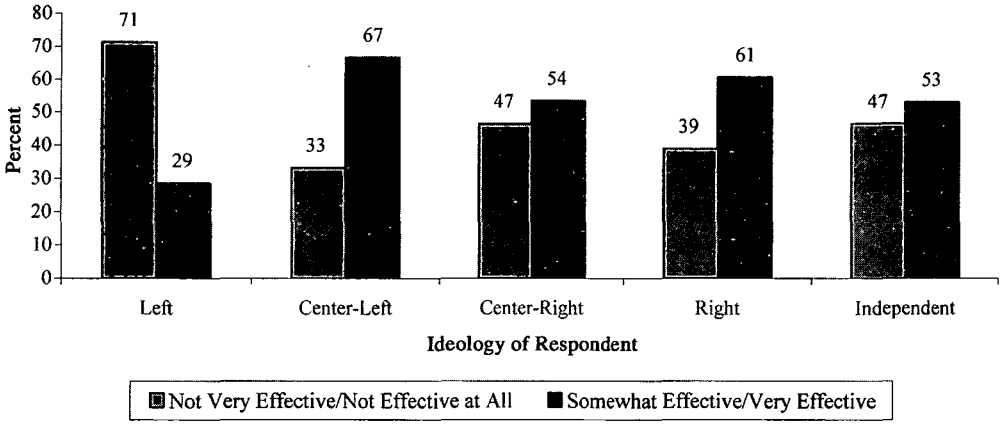
FIGURE 4
Effectiveness of the Constitutional Court by Ideology of Respondent



Note: n = 264.

ment's favor. It should be remembered that the left dominated the parliament during the period of the survey and pursued fundamental differences with the President over both the basic nature of the structure of governance as well as policy direction. It may have been the case that unless the court had completely vindicated their positions, many left-wing deputies would have viewed it as ineffective.

The President's view of the legitimacy of the court's decisions is reflected in the opinions voiced by the President's Representative to the Court and primary liaison between the court and the President, Vladimir Nosov. Nosov serves at the pleasure of the President and is responsible for presenting the President's arguments in each case in which the President has a stake. He contends that the court has performed its role as arbiter admirably and goes on to argue that the President has accepted all of the court's decisions because he believes that Ukraine has a rule of law system and that the court has been fair. As Nosov stated, "I think that the constitutional court has a very strong legal and constitutional basis to serve as an impartial arbiter of conflicts between the branches of power."[67]

Although there are still doubts as to the court's effectiveness, particularly among left-wing deputies, it is nonetheless true that a majority of deputies see the court as effective in settling interbranch differences at this early stage of its development. In addition, the President's Representative to the Court believes that the court has served as an impartial arbiter to date. Much of the credit for this goes to the Chairman of the Constitutional Court, Justice Ivan Tymchenko, who steered the court toward balanced decision making. If the court continues

[67] Vladimir Nosov, interview with Trevor L. Brown and Charles R. Wise, 29 July 1998.

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on the course on which it has embarked, it seems likely that the proportion of deputies seeing it as effective will grow, with the possible exception of some deputies on the left. The fact that a very large proportion of deputies of all kinds see the court's role as important bodes well for the future development of the court. In addition, the fact that both the president and the parliament have turned to the court on so many separation of powers disputes suggests that both institutions have faith in the role of the court as mediator. Furthermore, the fact that both political branches have accepted the court's decisions and have proceeded to implement them, even when the decisions have gone against them, is a positive harbinger for the court. This reaction stands in marked contrast to that received by the constitutional court in Russia in its early stages of development.

The cumulative effect of the constitutional court's decisions has been to largely move the interbranch competition from that of extraconstitutional warfare over the institutional design of the regime to that of competition over the role of each branch in shared governance processes. For example, the recent passage of the new budget code will serve to regularize and balance budgetary relations in an area that had previously been grounds for contentious legislative-executive disputes.

Conclusion

This case analysis demonstrates that the court has at times decided in favor of the president and at other times in favor of the parliament. As a result of this balanced record of decision making, the court has established itself as an arbiter of disputes between the president and the parliament, diffusing potentially destabilizing interbranch conflicts. Despite the absence of a history of the rule of law in Ukraine, preliminary evidence suggests that both the legislature and the executive branch respect the decisions of the court and will continue to turn to the court for resolution of separation of powers disputes.

The case of the constitutional court of Ukraine demonstrates the important role that constitutional courts can play in mediating disputes between legislatures and executive branches, thereby diffusing conflicts that may threaten the stability of the regime. Although our's is only one example, we believe that the arguments from other case-based research support our claim that if constitutional courts are to play the mediating role exemplified by Ukraine's court, three institutional thresholds must be achieved: the court must have extensive powers of judicial review, its jurisdiction must be broad enough to encompass most separation of powers issues, and neither the executive branch nor the legislature should be able to easily gain control of the court through the appointment process. This is not to say that the presence of all of these features will ensure that high courts will be able to successfully maintain regime stability in mixed systems. Rather, in addition to intervening variables such as those identified by Shugart, Carey, and Mainwaring—notably, the electoral and party system,

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the division of powers between levels of government, and the powers of prime ministers in mixed systems—the presence of a high court with these characteristics will increase the likelihood that a mixed regime will survive and will thereby contribute positively to the consolidation of democracy. We believe that these features provide a foundation for the constitutional court to contribute positively to interbranch stability. It remains for the justices on the court to build on that foundation in order to establish real legitimacy and credibility with the political branches. If the court fails to execute an evenhanded process, one that produces balanced outcomes in regard to the interests of the other two branches, it risks being ignored or actively thwarted. Thus far, the justices of Ukraine seem to have played well the hand they were dealt. It remains to be seen whether they can consolidate and further extend their position and increase the perception that the court can be effective in mediating interbranch disputes among the key political actors.*

* The authors thank Dr. Vladimir Pigenko and the anonymous *PSQ* reviewers for their comments on earlier drafts of this article. In addition, the authors are indebted to Natalia Rijova, who translated all of the Ukrainian constitutional court cases reviewed.

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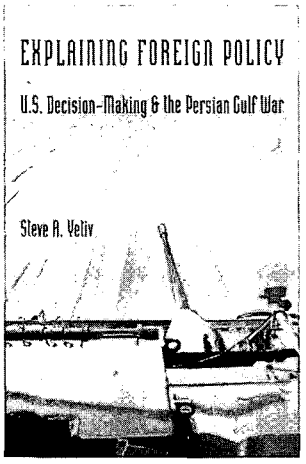

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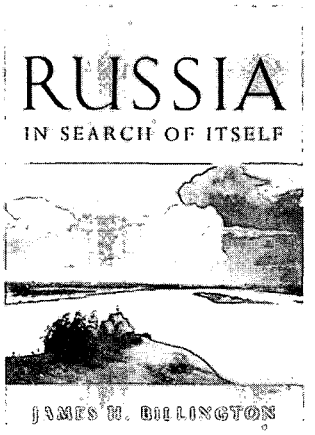

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Civilian Masters and Military Servants: A Review Essay

RICHARD L. RUSSELL

The American war against Saddam Hussein's regime and the occupation of Iraq have vividly brought to the foreground critical questions regarding the relationship between politicians and military commanders in a democratic government.[1] The critical dilemma in civil-military relations for democracies—as the great nineteenth-century Prussian strategist Carl von Clausewitz wrote in his masterwork, *On War*—is how to ensure the effectiveness of military means to be harnessed for achieving political ends without creating a military so strong that it would threaten to take the reins of political power.

Several recent books put a spotlight on the core and perennial issues of civil-military relations, particularly as they pertain to the threat, use, and management of force.[2] Each of these studies provides greater depth and field of vision to help inform politicians, soldiers, scholars, and citizens on the inherent tensions and elements of healthy civilian-military relations as well as the pitfalls and dangers of civil-military relations that fall out of equilibrium, even if that imbalance does not fall into a realm where a military coup becomes a distinct possibility. These books cover a broad swath of conflict through a wide span of

[1] The views expressed in this essay are those of the author and do not reflect the official policy or position of the National Defense University, the Department of Defense, or the U.S. government.

[2] Eliot A. Cohen, *Supreme Command: Soldiers, Statesmen, and Leadership in Wartime* (New York: The Free Press, 2002); Peter D. Feaver, *Armed Servants: Agency, Oversight, and Civil-Military Relations* (Cambridge, MA: Harvard University Press, 2003); Max Boot, *The Savage Wars of Peace: Small Wars and the Rise of American Power* (New York: Basic Books, 2002); and Dana Priest, *The Mission: Waging War and Keeping Peace with America's Military* (New York: W. W. Norton & Company, 2003).

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history to help readers see the continuities and discontinuities in civil-military relations, especially as they have been practiced in the United States.

Eliot Cohen's *Supreme Command* provides a rich, historical case study treatment of how four exemplary democratic leaders—Abraham Lincoln, George Clemenceau, Winston Churchill, and David Ben-Gurion—successfully exercised control over military commanders in war. In setting the stage for his analysis, Cohen sketches out the theory of "objective control" from Samuel Huntington's seminal study of civil-military relations, *The Soldier and the State.* Huntington argued that the most effective form of civilian control of the military is one in which military professionalism is maximized by isolating soldiers from politics and by giving soldiers free reign in the conduct of military affairs. Cohen calls this the "normal" theory of civil-military relations in which "much like highly trained surgeons: the statesman is in the position of a patient requiring urgent care" (p. 4). Cohen's research reveals, however, that the great democratic war statesmen were anything but passive and deferential patients and succeeded because they jousted, challenged, and imposed themselves deeply into the military realm considered off-limits by the normal theory of civil-military relations.

The great statesmen studied warfare intensely, just as Machiavelli had counseled in *The Prince*, where he instructed the would-be king that war is the first and most important subject. Cohen finds in his study of democratic statesmen that "All four were great learners who studied war as if it were their own profession, and in many ways they mastered it as well as did their generals. And all found themselves locked in conflict with military men" (p. 7). In breaking with the normal theory of civil-military relations, "Lincoln had not merely to select his generals, but to educate, train, and guide them. To this end he believed that he had to master the details of war, from the technology to the organization and movement of armies, if only to enable himself to make informed judgments about general officers. At a time of tremendous flux in the art of war itself, military professionals could not be relied upon to make infallible judgments on the means and methods best suited to the tasks at hand" (pp. 49–50). Clemenceau's remark that "War is too important to be left to the generals" is often uttered in discourse over civil-military relations, but, as Cohen points out, few know anything about how he arrived at that view (p. 54). In 1917, Clemenceau, at the ripe age of 76, regularly visited troops on the front lines during the dark days of World War I. He wanted first-hand battlefield accounts, in part to help him manage the war and his generals. Like Lincoln, Clemenceau searched his military high and low for capable commanders; "He reviewed the selection of generals down to the level of divisional commander, believing that that was the key level of command, and that many of the generals occupying those positions were too old and exhausted to lead properly" (p. 64).

British generals in World War II, like their French counterparts in the earlier continental conflict, deplored civilian "interference" in military affairs. They viewed with disdain Churchill's "excessive interest in what struck them

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as properly military detail; they feared his imagination and its restless probing for new courses of action" (p. 99). For Churchill, war was the realm of uncertainty and unintended consequences. As Cohen judges, "Churchill's awareness of the ironies of politics and the limits of human foresight was grounded not only in the experience of a long life in public affairs, but in a close study of history" (p. 109). Churchill's experience as a politician and soldier, especially in the mass slaughter of World War I, gave him a mistrust of the military and its bureaucratic decision making. Churchill remarked that "You may take the most gallant sailor, the most intrepid airman, or the most audacious soldier, put them at a table together—what do you get? The sum total of their fears!" (p. 110). Churchill in wartime wielded "the power of hard, intelligent questioning, based less on professional expertise than on wide reading and massive common sense—the quality that Carl von Clausewitz described as the bedrock of military genius" (pp. 130–131). Ben-Gurion, too, was a devoted student of military affairs and highly valued common sense for reigning supreme over the military. In guiding Israel to statehood in 1948, Ben-Gurion firmly believed that "In military matters, as in all other matters of substance, experts knowledgeable in technique don't decide, even though their advice and guidance is vital; rather, an open mind and a common sense are essential. And these qualities are possessed—to a greater or lesser degree—by any normal man" (p. 171).

Cohen is at his best in distilling his broad reading and penetrating thought on war and history to bring them to bear on contemporary issues in civil-military relations. He rejects the common wisdom that the roots of the American military debacle in Vietnam lay in intrusive civilian meddling in military affairs. As Cohen iconoclastically argues, "In fact, Johnson's and McNamara's conduct of the Vietnam war reveals the opposite of the methods of a Lincoln, a Clemenceau, a Churchill, or a Ben-Gurion. After the initial decisions to enter the war, the American civilian leadership held back from the kinds of bruising discussions with their military advisers that caused so much grief to Churchill's subordinates" (p. 180). Cohen assesses that "contrary to the received opinion, the fault in Vietnam was a deadly combination of inept strategy and excessively *weak* civilian control" (p. 185).

Cohen notes that despite the impressive battlefield successes of the 1991 Gulf war, the campaign suffered from lapses in strong civilian control. Civilian leadership abdicated authority and responsibility and overly deferred to military advice on when to end combat operations against Iraqi forces and how to handle ceasefire negotiations. President Bush's acceptance without tough civilian questioning of the military recommendation—coming from then Chairman of the Joint Chiefs of Staff (JCS) Colin Powell—to stop combat operations against Iraqi forces allowed Iraq's Republican Guard forces, the center of gravity for the Desert Storm campaign, to escape largely unscathed and ensured Saddam's stranglehold on power in Iraq. The ceasefire that ended the war, moreover, was negotiated by military commander General Norman Schwarzkopf, who—without firm civilian guidance to set the terms for the political

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peace—failed to insist that Saddam Hussein himself, rather than one of his military lieutenants, sign the ceasefire agreement.

Peter Feaver, in *Armed Servants*, proposes the "agency theory" as having more explanatory power than Huntington's objective control theory. His agency theory "provides for four general patterns of civil-military relations: military working with nonintrusive monitoring by civilians, military working with intrusive monitoring by civilians, military shirking with nonintrusive monitoring by civilians, and military shirking with intrusive monitoring by civilians" (p. 119). The book draws on a rich load of qualitative case studies, although Feaver's incisive and interesting treatments are sporadically marred by formal social-scientific modeling.

Feaver tests his model against the Cold War and finds that "the United States during the Cold War enjoyed a remarkable degree of military obedience" and that relations were characterized by a working military under intrusive civilian monitoring (pp. 128–131, 152). The notable exceptions to the general rule included: General Douglas MacArthur's public call for expanding the war in Korea and direct challenge to President Harry Truman's authority, for which MacArthur was rightfully fired; General Curtis LeMay's intention as head of the Strategic Air Command in the late 1940s to alter civilian orders on the use of nuclear weapons if they were not to his liking; and Army Chief of Staff Matthew Ridgeway's mobilization of public opinion against President Dwight Eisenhower's strategy of massive retaliation (pp. 128–131). Despite these exceptions, Feaver assesses that the military worked, in part, because of expectation of punishment if it shirked. Drawing from the MacArthur episode, Feaver assesses that "The willingness of one of the most unpopular presidents to fire one of the most popular generals thus established a high floor on the military's expectation that shirking would be punished if detected, an expectation that the agency model suggests played an important role in shaping civil-military interactions for the next several decades" (p. 165).

In marked contrast, Feaver finds that civil-military relations in the post–Cold War period were characterized by the military shirking under intrusive civilian monitoring. The American military, by and large, had little fear of punishment from civilians in response to shirking, in part because of President Clinton's personal liabilities, such as his avoidance of the draft, poor handling of the gays-in-the-military controversy, and personal scandal, all of which reduced his leverage with the military (p. 215). Feaver judges, for example, that "the Clinton administration lost its stomach for a showdown on radical defense restructuring after the imbroglio over gays in the military," and the JCS Chairman John Shalikashvili directed senior military leadership to maintain the status quo in the Quadrennial Defense Review in order to resist the civilian effort to form a comprehensive review of the defense picture as a baseline for reforms (p. 201).

To be fair, signs of the erosion of civilian control over the military appeared in the last stages of the George H. W. Bush administration. General Powell, as

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JCS Chairman, took a public position in the policy debate over U.S. involvement in Bosnia that strongly suggested a lapse in civilian control over the military. In September 1992, Powell gave an on-the-record interview to the *New York Times* in which he rejected the use of no-fly zones and argued that there was no political will behind the use of decisive force. He also spoke to the reporter "angrily as he complained about the impetuousness of civilians, who he said had been too quick to place American forces in jeopardy" (p. 259). Powell subsequently elaborated on his opposition to intervention in the Balkans in a *New York Times* op-ed and a *Foreign Affairs* article, appropriate public venues for civilian policymakers but highly unusual ones for active-duty military officers, especially the Chairman of the Joint Chiefs. Although policymakers wanted to intervene militarily to stem the violence in the civil war in the Balkans, they were stymied by JCS estimates that such an operation would involve high numbers of U.S. troops. By Feaver's assessment, "The fact that the military ultimately conducted those missions with a smaller military force than advised suggests that the military had been exaggerating the costs so as to foreclose an option, which would count as shirking from the agency perspective" (p. 262). Feaver judges that in this episode, the military encroached well into the responsibilities of civilian masters; "the military expert can speak to the pros and cons and riskiness of limited measures, but he cannot declare a limited measure a 'mistake,' because the judgment of whether the risk is acceptable is a political one" (p. 263).

Bosnia was not to be the last case of the military veering into the civilian lane of authorities. In 1999, there was evidence that the military was shirking in the run-up to the war in Kosovo. President Clinton imprudently stated in the earliest stages of the crisis, with Serb forces waging a brutal counterinsurgency campaign in Kosovo against Kosovar insurgents and civilians alike, that American ground forces would not be used. The declaration substantially lessened Serb leader Milosevic's incentive to capitulate to NATO and to cease his brutal terror campaign in Kosovo. As the Serb resolve appeared to be holding in the face of several weeks of a NATO air campaign, Clinton and his advisers—in no small measure due to political pressure from British Prime Minister Tony Blair, who was more strategically minded than his American counterpart—began to reconsider putting ground troops back on the "policy table." But, as Feaver recalls, "the chiefs leaked again to the *New York Times* their adamant opposition to ground troops, even as the White House clearly signaled a desire to at least credibly threaten the use of ground troops. From an agency standpoint, these leaks are in and of themselves evidence of shirking, but what is even more striking is the rationale reflected in the report: 'The senior commanders, including the Chairman and Vice Chairman of the Joint Chiefs of Staff, believe there is insufficient domestic and international political support for sending troops into Kosovo'" (p. 279).

The American military, especially the Army, loathes small conflicts, such as Kosovo, that are fought for limited goals with limited means and prefers to

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fight modern reenactments of World War II, such as the 1991 Gulf war. Max Boot probes the former—which Rudyard Kipling referred to as "the savage wars of peace"—from the early twentieth century in American history, which, for better or for worse, are more frequent than major wars. The small conflicts examined by Boot in *The Savage Wars of Peace* bear striking similarities to later conflicts, which belies the common mind-set of today that the United States has embarked on new and previously unknown military endeavors during the post–Cold War period. Thomas Jefferson's frustrating search in the early 1800s for a navy commodore with the fire in his belly to fight the Barbary pirates in northern Africa, who were raiding American shipping, foreshadows Lincoln's search for the fighting general that he found in Ulysses S. Grant. President McKinley's controversial dispatch of 5,000 troops in 1900 to fight the Boxer Rebellion in China without consulting Congress hints of modern debates. After the suppression of the Boxers, Peking was split into zones of foreign military occupation—to include Russian, French, British, and Japanese troops—and in the American western half of the city, "American troops enforced sanitary regulations to stop epidemics, opened charities and hospitals, set up a court run by the Chinese, created schools, policed opium dens and gambling houses. The U.S sector was so well run that people flocked there from other parts of the city" (pp. 96–97). The allied cooperation, or lack thereof, in China smacked of Churchill's quip that coalition warfare "is a tale of the reciprocal complaints of allies" (Cohen, p. 68). Contemporary operations, whether in the Balkans, the Persian Gulf, or South Asia, only confirm Churchill's insight on this score.

Boot's treatment of the American occupation of the Philippines after the Spanish-American War in 1898 provides a historical analogy to today's Iraq. Three years after the war had ended, "The Filipinos stubbornly resisted their new colonial masters, and though successive U.S. generals proclaimed victory at hand, American soldiers kept dying in ambushes, telegraph lines kept getting cut, and army convoys kept being attacked" (p. 99). President McKinley sent then Ohio judge William Howard Taft to supervise the transition from military to civilian rule in pacified areas. Taft emphasized a policy of "attraction," having soldiers build schools, give sanitation and health services, set up courts run by locals, and supervise local elections and administer government functions to show the benefits of U.S. occupation, while at the same time aggressively moving militarily against insurgents (p. 115). In the years between 1898 and 1902, a total of 126,468 American soldiers served in the Philippines and suffered 4,234 losses. The American counterinsurgency strategy blunted the insurgency and paved the way for the formation of a Philippine national legislature in 1907, an autonomous commonwealth in 1935, and an independent state in 1946 (p. 125).

General John Pershing seethed about the restrictions that President Woodrow Wilson placed on his forces in the punitive expedition into Mexico to hunt down revolutionary and outlaw Pancho Villa, but Wilson refused to order a full-scale invasion and occupation of Mexico, given the unsettled situation in Europe on the eve of World War I. Wilson wanted to lessen the risk of war

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with Mexico while at the same time maintaining pressure on Pancho Villa, a strategy that cut against the army's traditional all-or-nothing approach to warfare (pp. 197, 204). Later, during World War I, Pershing, as Commander of the American Expeditionary Force in France, and General Peyton March, Army Chief of Staff, opposed allied intervention in the Russian revolution as an unnecessary and unwinnable diversion from the Western Front. As Boot observes, however, that "was the narrow view of military professionals focused on a narrow military problem—defeating Germany. They ignored the larger question of what the postwar world would look like and failed to realize how damaging the existence of a 'Red' regime in Russia would be to America's hopes 'to make the world safe for democracy'" (p. 210). Churchill's prophetic warnings in 1919, as Secretary of State for War, about the dangers of a communist Russia were ignored, much as were his warnings in 1938 about the dangers posed by Hitler's rise to power (p. 223).

The Army's preference for total, rather than limited, war resurfaced in the Powell doctrine that was spawned by the Vietnam war. The military generation that served as junior officers in Vietnam matured into senior officers who came "to stand for an all-or-nothing approach to warfare, with the ideal war being one in which the United States wins with overwhelming forces, suffers few casualties, and leaves immediately" (p. 319). The Powell doctrine, however, restricts options for civilian policymakers and may actually bring about larger wars by reducing diplomatic leverage. American adversaries are able to challenge American interests, calculating that the Americans, guided by the Powell doctrine, are incapable of modulating violence for political purposes and would not contemplate massive war for the sake of secondary or tertiary interests.

Dana Priest's *The Mission* complements Boot's book with fascinating accounts of the "savage wars of peace" that the United States has waged in the post–Cold War period. The pervasiveness of the Army's Powell doctrine approach and the stubborn, bureaucratic resistance to nurturing forces and capabilities for pursuing political purposes is a running subtext in Priest's treatment of the interventions in Bosnia and Kosovo. Her analysis, conversely, shows the versatility of the Special Forces, the stepchild of the Army. "Until the war in Afghanistan, though, the Army treated the special forces like a fifth, bothersome service branch that it would rarely figure into its grand schemes, big wars, or fast-track leadership promotions" (p. 123). A lesson to be drawn from the work of both Priest and Boot is that the United States needs constabulary or gendarmerie-type forces.

Of greater relevance to American national security is Priest's analysis that perceptively plumbs the disquiet in American civil-military relations. "Long before September 11, the U.S. government had grown increasingly dependent on its military to carry out its foreign affairs. The shift was incremental, little noticed, de facto. It did not even qualify as an 'approach.' The military simply filled a vacuum left by an indecisive White House, an atrophied State Department, and a distracted Congress" (p. 14). The military's combatant command-

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ers had, in Priest's judgment, grown "into a powerful force in U.S. foreign policy because of the disproportionate weight of their resources and organization in relation to the assets and influence of other parts of America's foreign policy structure—in particular, the State Department, which was shriveling in size, stature, and spirit even as the military's role expanded" (pp. 16–17).

Although the Wilsonian call for active export of democracy appears in the post–Cold War to resonate strongly with both Democrats and Republicans, Americans have forgotten that strong civilian control over the military is a load-bearing pillar of democracy at home. The imbalance in civil-military relations, moreover, is probably poised to grow worse as fewer and fewer Americans have either direct or indirect personal contact with or knowledge of military affairs. Priest puts her finger on the heart of the problem: "Predictably, the military learned to operate in civilian realms, while their civilian counterparts in every agency grew more isolated, less knowledgeable, and less comfortable with the military world" (p. 46). If the United States is to reap the benefits of healthy civil-military relations, civilians need to balance the military's growing influence in policy and deliberately study political-military affairs to be more effective, responsible, assertive, and unapologetic masters of military servants. And the reading and study of the books of Cohen, Feaver, Boot, and Priest would be steps in the right direction.

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Book Reviews

Terrorism, Freedom, and Security: Winning Without War *by Philip B. Heymann. Cambridge, MIT Press, 2003. 210 pp. $24.95.*

Philip B. Heymann's book should be required reading in the White House, throughout the administration, in Congress, and wherever else people are directly or indirectly involved in anti- and counterterrorist decision making or are affected by actions and policies in those areas—which means literally all Americans. Unfortunately, the mass media, especially television, have paid scant attention to this important volume while providing ample promotional opportunities to the authors of sensational post-September 11 books that exploit the public's lingering fears. As far as I can tell from checking the Lexis-Nexis archive, CNN was the only TV network that interviewed the author. The interviewer seemed so perplexed by his "winning without war" thesis that she wondered why the words "war on terrorism" bothered him. What concerns Harvard Professor Heymann, however, are not words but rather the extraordinary steps taken in the domestic and foreign policy realm under the cover of the Bush administration's definition of the post-September 11 threat as "war."

While recognizing that crisis management during ongoing terrorist crises, emergency response measures, as well as retaliation and deterrence in the wake of terrorist strikes are major tasks and options in dealing with terrorism, Heymann focuses on prevention. The starting point of his analysis cannot be emphasized enough: because terrorism is not a temporary phenomenon, but is likely to remain a serious threat for decades to come, policymakers must develop a prudent response strategy that contains short-term and long-term measures. Heymann suggests that the development of such a comprehensive strategy calls for critical thought, not simply the pronouncement of slogans that are convenient for justifying unwise and ultimately ineffective policies. Although extraordinary measures that curb citizens' civil liberties and bypass the constitutional power-sharing arrangement or circumvent international law may be an acceptable price to pay for increased security during a conventional war of limited duration, Heymann warns of the consequences of a long-term retreat from fundamental rights and values in the long struggle against terrorism.

The book's most valuable contribution to the field of anti- and counterterrorism is a comprehensive analytical framework that points to the most impor-

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tant goals in efforts to prevent terrorism at home and abroad, various options for achieving those goals, and the benefits and risks tied to the available policy alternatives. Heymann demonstrates convincingly that many measures considered to enhance prevention efforts are likely to be ineffective and costly in terms of alienating people at home and abroad. In applying his framework, Heymann tackles many controversial issues, from racial and ethnic profiling to the assassination of terrorist leaders. The thoughtful discussion and rejection of torture is a welcome departure from the cavalier post-September 11 treatment of this topic in the mass media. In some instances, the author tends to underestimate the difficulties of achieving crucial preventative goals such as aviation security and the identification of the most likely targets of future terrorist attacks.

While supporting the military actions against Afghanistan under the rule of the Taliban and arguing that the United States "should use the threat of our military and economic powers to prevent any state from openly supporting terrorists" (p. 162), Heymann argues convincingly that law enforcement and intelligence—not military force, as used in wars against nation states—are the most promising means to prevent conventional and catastrophic terrorist attacks by nonstate actors. To be sure, this requires broad international cooperation. Here, too, Heymann suggests options for enlisting such support. In the post-September 11 period—not before—this sort of cooperation has, in fact, worked very well. Unfortunately, nobody has compiled and publicized a summary of the many post-September 11 instances around the world in which terrorist plots were discovered in time and known terrorists and suspects arrested because of good bilateral and multilateral cooperation between intelligence and law enforcement agencies. But this success story does not fit the "war on terrorism" and the actions justified in its name.

BRIGITTE L. NACOS
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U.S. Hegemony and International Organizations *edited by Rosemary Foot, S. Neil MacFarlane, and Michael Mastanduno. New York, Oxford University Press, 2003. 296 pp. Cloth, $74.00; paper, $24.95.*

Relatively little scholarship has ever sought to test many of the claims made in everyday political rhetoric about U.S. foreign policy: does the United States prefer to "go it alone"? Is the United States so wedded to its "exceptionalism" as to undertake aggressive unilateralism and risk alienating the entire international community and its multilateral organizations? *U.S. Hegemony and International Organizations* is an edited volume in which a wide array of scholars and policymakers respond to these questions specifically as they pertain to: generalized perspectives on the United States and multilateral international organizations, with chapters from Edward C. Luck and G. John Ikenberry

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foregrounding the volume's later chapters with overviews of "American exceptionalism" and the U.S.'s "ambivalent" economic and security multilateralism, respectively; international organizations, such as the United Nations' security council, the World Bank/IMF, the World Trade Organization, and the Kyoto Protocols for the environment, with chapters from David M. Malone, Ngaire Woods, Gautem Sen, and Stephen Hopgood, respectively; and regional organizations such as the Organization of African Unity, the Association of Southeast Asian Nations, NATO, and the OAS, with chapters from Philip Nel, Ralph A. Cossa, David G. Haglund, and Hal Klepak.

As for theoretical framing, the editors of the volume outline their task in the introduction: not only are they testing many of the commonplace assertions made about U.S. policy toward international organizations, but they also have a second objective, to "examine the impact of U.S. behavior on the capacity of each organization to meet its own objectives" (p. 2). In other words, can and does the United States exercise "hegemony" over international institutions designed to facilitate multilateral policy objectives? In this latter quest, they see their volume as an extension of claims made by Karen Mingst and Margaret Karns in their 1990 book on U.S. foreign policy and multilateralism, and of Patrick Stewart and Shepard Forman's recent compilation (2002) that draws together all scholars undertaking multilateral studies in the past decade, including many of the contributors to both volumes. This is an interesting and promising line of inquiry that would be of particular benefit to scholars in the United States, who tend to ignore such important questions. The volume is well-written and conceived, and the editorship was clearly professional and tightly organized. I unreservedly recommend it to scholars teaching international relations seminars.

The conclusions of the contributors are uniform: in all issue areas, the United States exercises hegemony to the extent that it participates in multilateral institutions when it benefits the United States and refrains from doing so when it does not, with little backlash. The question is: why? The answer comes from the contributors in each of their issue areas: the United States is the preponderant power in international and regional organizations and can only help them achieve their goals when positively present. A notable exception is the World Bank/IMF whose resources are generally stable, reducing the influence the United States can exercise over core decisions. The power of the United States over the Americas is demonstrated to have caused South American countries to form MERCOSUR (Common Market of the South) when they feared they would not be included in NAFTA. This is a good example of the kind of hegemony the United States exercises and the kind of analysis the contributors make to understanding U.S. hegemony. Another is the influence the United States wields over NATO due to its military and technological superiority; again a preponderance of power in key areas works to reinforce U.S. hegemony.

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However, the authors miss a key area that, although not conforming to their strict definition of multilateralism, has nevertheless captured most of the world's, if not the U.S.'s, attention in the past decade: the Middle East. There is no chapter explaining U.S. hegemony in the Middle East, nor is there an explanation in the introduction as to why this chapter is missing. David Malone's chapter on the Security Council would seem to satisfy this requirement, inasmuch as the United States has elected to bring its claims against Iraq and Afghanistan to this forum; however, it is unclear why this obviously strategic area does not deserve a chapter of its own that includes a detailed history of the region (as is given in the chapters about other areas) and a discussion of U.S. foreign policy toward nuclear nonproliferation and terrorism and of the way in which the Arab League (a regional organization) has been influenced by the United States. These are the two most pressing multilateral issues of the past decade. The same could be said for the lack of a chapter on the Indian subcontinent. While I understand that edited volumes cannot please everybody or cover every issue, I make this point only because the Middle East would seem to be a prime area in which the authors could test their objectives.

To truly test hegemony, the editors would have to be willing to examine those states that have explicitly challenged it, such as Iraq. When a state must resort to the use of force, it is no longer exercising hegemony, but is rather doing one of two things: carrying out a police action (in which its power is unpleasant but uncontested) or losing diplomatic influence; and the larger the audience (world community), the larger the loss of hegemonic power. I do not view this omission as a slight on the volume, inasmuch as there are clearly important lessons to be learned from each of the chapters (Haglund's chapter on NATO is positively delightful, as is Nel's brilliant reading of hegemony in Africa), and they are continuing an important research agenda. I see the lack of a chapter as a missed opportunity to strengthen an already path-breaking volume on one of the most salient issues this century. Maybe next time?

JULIE WEBBER
Illinois State University

A Grand Strategy for America *by Robert J. Art. Ithaca, NY, Cornell University Press, 2003. 344 pp. $29.95.*

Several new strategies have been offered to replace "containment" since the end of the Cold War. Some are instructive, some provocative, some novel. Few are useful. Robert Art offers yet another candidate, "selective engagement," which is both instructive and useful, although not especially novel. Its prescriptions, for example, overlap considerably with those of Zbigniew Brzezinski's *The Grand Chess Board.* In brief, it is an important book that deserves serious attention.

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Art makes military power the centerpiece of his strategy. Deciding what to select and what to neglect in the world, he includes Europe and northeast Asia as the key regions for forward military deployment, and he proposes the capability to project military forces into a third region, the Middle East and Persian Gulf. Although he would neglect the rest of the world, he envisions occasional interventions there to preserve democratic rule, stop mass murder in civil wars, and protect alliance credibility. U.S. strategy during much of the Cold War included these very things, especially since 1980 and the creation of the U.S. Central Command. Thus, "selective engagement" is not a radical departure.

Art identifies six primary national interests, then reviews alternative strategies for ensuring them. He arrives at "selective engagement" through a process of elimination, starting with eight possible alternatives. "Dominion," "isolationism," "global collective security," "cooperative security," "containment," and "offshore balancing" do not pass his test. "Regional collective security" retains a place within "selective engagement." As he further elaborates "selective engagement," it takes from the others as well, becoming a pragmatic amalgam of all but "isolationism."

Is this scholastic analysis really worth the effort if it yields little more than a commonsense restatement of national interests and minor modifications of U.S. Cold War military deployments? "No" is the easy answer, but that would be wrong. It provides a much-needed antidote to the popular wisdom in the Pentagon and elsewhere that radical change is needed. This antidotal quality is especially powerful in the final chapter, devoted to how to implement "selective engagement," where the author cautions against preemptive wars, warns against alienating America's allies, and worries that the war on terrorism is hijacking U.S. foreign policy.

Art also offers the pieces of a strong case for several noncombat roles for U.S. ground forces that are much disparaged in the Pentagon today, mainly because addressing them would require more ground troops. Unfortunately, these arguments are dispersed in the text and never driven home adequately. Unless the ground forces are increased by at least two divisions, the present deployment schedules for Iraq and Afghanistan will leave Europe with virtually none in two years' time. That will undermine the cornerstone region for a "selective engagement" strategy.

For both undergraduate and graduate courses, this volume should be a useful text. Although it bogs down at times as it addresses so many viewpoints and theories advanced by other scholars, this is probably a pedagogical virtue because it deals with them not only at the theoretical level but also at the empirical level, where they are often weakest.

Readers may be surprised to see Art make military power the centerpiece of this analysis. Clausewitz certainly would blanch at it. It leads him to give fragmented attention to the nonmilitary international organizations and institutions that became more, not less, important after the Cold War. Still, he

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gets things right: for this American-led international system to continue to be effective, some version of Art's military strategy is an essential component. No clever political or economic scheme, for example, the "democratic peace" or "globalization," can compensate for it. Art has given us a first-rate and very useful book.

WILLIAM E. ODOM
Georgetown University

No End To War: Terrorism in the Twenty-First Century *by Walter Laqueur. New York, Continuum, 2003. 288 pp. $24.95.*

Was September 11 an intelligence failure? Widely noted security authority Walter Laqueur argues yes—and no. After a somewhat facile recounting of what is surely a far more nuanced history of U.S. government attention to the terrorist threat, primarily during the 1990s, to adduce "reasons for the intelligence failure" (p. 127), Laqueur concludes that the United States "could have allocated far greater resources to the intelligence agencies and kept watch that these were put to good use. But it could not have grounded all civilian aircraft for an indefinite period" (p. 129). The criticism is a general one, and the author provides little sense of how, amid the welter of conflicting governmental and international priorities, terrorism could have been evaluated as the leading one long enough in advance for investment in programs to have had much impact.

Laqueur's tendency to assert and then take back permeates his latest terrorism study and is not limited to his treatment of intelligence agencies or governments. The media are castigated for lack of interest in the subject and for failing to cover it, and then for the fact that they were publishing the same or similar stories twenty-five or thirty years earlier. (My clipping file on this subject alone, from just a few media sources, occupies several boxes.) Academic experts are faulted for politicizing study in the field, but this section of the narrative focuses overwhelmingly on Middle East studies, not terrorism research per se, while Laqueur's own work remains political to a fault.

To the widely expressed concern among Americans that their country is hated in the world, the author's answer is that "To be hated is a consequence of being great and powerful" (p. 161). Laqueur's implicit solution is not to be gentler—that would be ineffective—but to stand tall and brazen out the infidels. Becoming a weaker nation would lead to the evaporation of the hatred, but that is not acceptable. Yet, in the context of the postulated terrorist threat (which in Laqueur's view hinges on smaller and smaller groups that can more easily maintain a high degree of fanaticism), being strong enough to overcome the threat would entail such a high degree of repression that views of America would certainly be affected adversely. Moreover, there is no sense here that America can maintain such strength without overextending itself, a danger that is already visible in the Bush administration's "Global War on Terrorism."

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In the 1980s, Ronald Reagan justified his support of rebel groups in Nicaragua, Angola, Afghanistan, and elsewhere (some of them the very terrorists we list today) with the assertion that one man's terrorist is another man's freedom fighter, an argument that Laqueur attributes to the CIA, denigrating the notion that perceptions of terrorism might vary from country to country (p. 121, but elsewhere he explicitly quotes this phrase and terms it a "sophism" [p. 235]). But Laqueur himself frequently engages in precisely this type of exercise. In various places, he counts among terrorists or terrorist threats the antiglobalization movement, drug traffickers, nationalist movements, ultranationalist movements, fundamentalist religious movements, political dissidents, and so on. The inability of experts even to agree on a definition of terrorism facilitates this type of ranking, and although Laqueur addresses the definition question at length in an appendix, he concludes that it is of little importance. Until observers recognize that "terrorism" is a tactic adopted by individuals and groups, the labeling of movements as somehow inherently "terrorist" will never be overcome, and the dangers of disproportionate and counterproductive responses will continue to grow. This problem lies at the very heart of the Israeli approach to the Palestinian question, which is, of course, one of Laqueur's major concerns.

No End to War joins a growing pile of works on terrorism that recite conventional wisdom and restate old arguments. Despite Laquer's efforts to disentangle questions of causation, the insights here are few. Look elsewhere for a less tendentious view.

JOHN PRADOS
National Security Archive
Washington, DC

How Democracies Lose Small Wars: State, Society, and the Failures of France in Algeria, Israel in Lebanon, and the United States in Vietnam
by Gil Merom. New York, Cambridge University Press, 2003. 295 pp. $23.00.

Given daily press reports of the continuing conflict in Iraq, one reaches eagerly for Gil Merom's book about the difficulties facing democratic governments as they seek to persevere against insurgencies. Noting the paradox that even as technology provides ever more powerful military capabilities to modern democratic societies they seem no more capable of coping with determined adversaries in their own countries, Merom promises an explanation. And he provides one in the two extensive case studies that form the core of the book—France in Algeria and Israel in Lebanon. Each of these cases is extremely well done. In approximately seventy pages for each case, Merom weaves the history of the conflict, the domestic developments in the intervening country, and an insightful analysis of the institutional, political, and societal forces at play. These portions of the book are well worth reading.

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Despite the title, however, there is no comparable analysis of the United States in Vietnam, only a superficial seven-page attempt to relate the U.S. experience to the generalizations growing from the two real cases. The contrast is stark and detracts from the strength one is willing to accord the author's generalizations. Including Vietnam in the book's title was misleading, probably the result of an ill-considered attempt to heighten the book's appeal.

The title is misleading in another way as well. As Merom points out, modern democracies do not lose *all* small wars. In the 1990s alone, for example, the United States easily won the 1991 Persian Gulf war, as well as conflicts in Haiti, Bosnia, and Kosovo. Democracies lose only certain kinds of wars—protracted civil struggles overseas—a fact that has had profound influence on the types of wars democracies attempt to fight and, consequently, on their military doctrine, technology, and tactics. In 2003, the United States thought it was entering this second type of easily winnable war in Iraq and, indeed, won it handily. Since then, however, the opposition has sought to develop and sustain the second, more difficult type of war. If it succeeds in doing so, then Merom's critical factors may again come into play. Greater attention to the differences between these types of conflicts and their implications for security policies would have been welcomed.

In addition to these omissions, the book disappoints in one other way. It is essentially two case studies wrapped in a complicated theoretical construct that tries too hard to capture too many conceptual notions at once. The author notes the book's origins as his doctoral dissertation in the first sentence of the acknowledgments and then proceeds for the first eighty pages of the text to make that evident. As summarized by the author in the conclusion, the paradox addressed by the book is explained "in terms of a struggle between *two* forces on *three* realms over *three* issues" (p. 229). Explaining a multidimensional space is never easy, but in the introductory section, Merom seems to complicate unnecessarily the fairly straightforward explanation that grows out of the two case studies. Given the struggle necessary to understand Merom's theoretical construct in the beginning, few readers will have the patience to persevere until the subject promised in the title reaches center stage.

BARRY M. BLECHMAN
The Henry L. Stimson Center

Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention *by Neta C. Crawford. New York, Cambridge University Press, 2002. 488 pp. Cloth, $85.00; paper, $30.00.*

Neta Crawford has written a bold and stimulating account of the role of ethical argument in the abolition of slavery, the extension of European colonialism, the formation of international trusteeships, and decolonization. The primary puzzle she addresses is why colonialism ended "so close to the peak of its practice" (p. 2), but the book offers a great deal more than an intervention in this debate.

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Crawford's primary theoretical contribution is to demonstrate how ethical arguments bring about changes in normative beliefs and subsequently in behavior. Showing that changing conceptions of what is right and good lead to changes in behavior is a taller order than demonstrating how transformed conceptions of self-interest change behavior. Crawford makes the case that ethical arguments evoking changing conceptions of the humanity of the "other"—Native Americans, colonized Africans—helped to change international practices of slavery and colonialism. She delineates a series of steps by which such changes occured: through ethical argument old practices were delegitimized, and reconstructed ethical ideas generated alternative conceptions of interest and penetrated politics and institutions, ultimately changing actor capabilities, institutions, and behavior (pp. 100–109).

Although I found the theoretical chapters somewhat encyclopedic and overloaded with citations, Crawford's focus on ethical argumentation is compelling. She carefully defines her terms and is admirably systematic in laying out her method of "informal argument analysis" and specifying both the extent and limits of her causal claims.

The case study chapters are rich with insights, such as the demonstration of how, ironically, the antislavery movement provided justification for European colonial expansion in Africa, or how the League of Nations mandate system contained the ideological seeds of its own destruction as the rhetoric of self-determination ultimately outgrew and overwhelmed the intentions of its initial proponents. In addition to providing broad surveys of European slavery, colonial practices, and the decolonization process, Crawford offers a more in-depth study of South African rule of, and eventual withdrawal from, South-West Africa (Namibia).

To shore up her causal claims, Crawford goes through the exercise of considering alternative explanations and even a few counterfactuals. She serves these up in a separate chapter, concentrating entirely on explanations for decolonization. Her choice of which alternatives to consider misses some opportunities. Although the theory of strategic over-stretch definitely needed to be addressed (it is dutifully addressed and dispatched), as did theories that stress the efficacy of liberation movements (also dutifully addressed and dispatched), Crawford does not do justice to economic explanations.

Economic explanations of the end of colonialism have recently tended to concentrate on calculating economic costs and benefits of empire (a calculus that Crawford rightly points out is indeterminate), but an economic explanation derived from Marxist theory might have provided a more significant challenge to her ethical argument explanation. Crawford refers, here and there, to the process of compelling colonized peoples into the capitalist wage-labor pool. But she could go further in considering a historical materialist explanation for decolonization, focusing perhaps on the growing need for capital for "free" wage-labor, as an alternative to her own. Historical materialists do, after all, have a rather cynical interpretation of the rhetoric of freedom and liberation:

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freeing the laborers means freeing them to enter the labor pool. Why not consider this as a possible explanation for decolonization, in the broader context of the development of global capitalism?

Crawford also misses an opportunity to pit one form of "ideational" explanation against another. Although her theory sections carefully distinguish ethical argument from other forms of argument, stressing that we must focus on the content of normative beliefs to understand how they shape behavior, in the case study chapters, her concentration on ethical argument gives *pragmatic* arguments a derivative, subsidiary quality, as though pragmatic arguments are derived purely from material interest on the one hand, or from a broader ethical position on the other. This may be why she does not directly pit pragmatic arguments about the utility of colonialism against ethical arguments about the injustices of colonialism as alternative explanations for decolonization. But one could deploy the sort of logic Crawford uses to assert the causal efficacy of ethical argument to show the causal efficacy of pragmatic argument instead. The question would then be whether *arguments about the strategic and economic costs and benefits of empire* did more to delegitimize practices of imperialism than did *ethical arguments about human equality.* Crawford's focus on argument and persuasion invites such a comparison.

In a related vein, the role of domestic democratic institutions, international institutions, and international law is very important to the argument in this book, but "institutionalists" will be disappointed to discover that institutions are not explicitly treated as variables with independent explanatory power. Rather, institutions are treated as "carriers" of dominant ethical and pragmatic arguments, and as fora for further argument. It may also be worth exploring whether it is the institutionalization of *ethical beliefs* that accounts for changing international behavior, or whether, alternatively, it is the institutionalization of *pragmatic beliefs* that is more important, ethical content being merely a justification for pragmatism. This also would be a way of examining the explanatory power of competing *types* of ideas (or arguments), rather than pitting ideas against "nonideational" factors.

Despite some caveats, Crawford portrays ethical argument as a cause of increasing mutual human empathy and understanding of the dignity and equal status of the "other" and seems to have faith in the progress of democracy and greater equality in world politics. In the final chapter, she suggests how we might further this progress by embarking on a global convention on humanitarian intervention, and delineates explicitly Habermasian criteria for making such a convention legitimate. The skeptic might well inquire whether arguments about when intervention is ethically justified may do more to polarize than to build bridges in our deeply divided world, and whether pragmatic arguments may be the best we can hope for in repairing the fabric of our frayed international institutions.

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Democracy Delayed: The Case of Castro's Cuba *by Juan J. Lopez. Baltimore, MD, Johns Hopkins University Press, 2002. 272 pp. $42.50.*

For a democratic regime transition, Juan Lopez argues, there must be "a widespread belief in the population that change is possible" and also "independent sources of communication to reach a large percentage of the population regularly" (p. 160). The first proposition seems a tautology: we infer that such belief exists only after people acted, in which case they surely believe that change was possible. The second proposition recalls that the control of information is a well-known authoritarian instrument. While advancing these arguments to explain why a regime transition did not occur in Cuba in 1989 or soon thereafter, Lopez also launches a sometimes contradictory critique of alternative explanations and ignores important evidence.

This book about Cuba cites no sources from Cuba. Lopez systematically ignores the writings of Cuban scholars, even those published outside Cuba. In the rare references to Cuba's official newspaper, *Granma*, he only footnotes sources outside Cuba that had cited *Granma* (pp. 14, 154). There is no entry for Fidel Castro in the bibliography. Lopez criticizes the Roman Catholic Church in Cuba for being too conciliatory toward the Castro government, yet he cites none of the pastoral letters or homilies of the Cuban bishops, or the magazines that several dioceses publish, that criticize the government. Lopez's important, valuable evidence comes mainly from political dissidents and exiles. Yet, the exiles are not in Cuba, and their absence weakened the opposition. Moreover, in depriving himself of the opportunity to understand the government on its own terms, Lopez cannot weigh the relative merits of various arguments for regime survival.

Lopez thoroughly discounts arguments that suggest that some Cubans support their government or that they may harbor some nationalist feelings that could complicate U.S.-Cuban relations. He provides recurrent comparisons to regimes in former communist Czechoslovakia, East Germany, and Romania but refuses to believe that Cuba's revolutionary experience, especially during the 1960s, may help to explain why its regime has lingered longer. Nor does he believe that Cubans might support some government policies (education and health care, for example) and, as a consequence, be more conflicted in pondering regime transition. His arguments are also fixed as if at a single moment in time, taking little account of evidence of the evolution of views and experiences in Cuba in the 1990s.

The United States plays a key role in Lopez's account of the absence of a Cuban transition. He asserts that President Bill "Clinton did not want to bring about the demise of the Castro government" (p. 117), even though he notes in his next chapter that in the 1990s, the purpose of U.S. sanctions on Cuba was precisely to bring about regime change. He chastises Cuban-American members of Congress and Cuban exiles, especially the Cuban-American National Foundation, for insufficient zeal in fostering regime change in Cuba.

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Lopez advocates U.S. government payments to dissident groups in Cuba but takes no position regarding individual remittances—a subject absent from the index. He ardently backs independent sources of information for Cubans, particularly Radio and TV Marti, but opposes travel to Cuba by U.S. citizens, even under the restrictions prevailing during 1999–2003.

Lopez is a good debater. He sometimes presents apt critiques of the arguments of others. At his best, he describes well trends in the Cuban dissident community and in the politics of their relations with Cuban exiles. A much better book, however, would have made more effective use of evidence and been open to a fuller array of arguments about Cuba's delayed transition.

JORGE I. DOMÍNGUEZ
Harvard University

Canada, the United States, and Cuba: An Evolving Relationship *edited by Sahadeo Basdeo and Heather N. Nicol. Boulder, CO, Lynne Rienner Publishers, 2002. 179 pp. $49.95.*

The editors and authors analyze events (to May 2002) affecting the three countries' relations. Each chapter has a significant, precise statement of objectives, yielding, except in the "Conclusion," a well-organized, enjoyable readability and accurate results. The conclusion has an acceptable problem statement, documented in a reasonably complete and informative style, based primarily on Canadian newspaper articles. Its uselessness and fuzzy, abstruse, tortured prose result partly from too much deconstruction of discourses, narratives, spaces, (re)imaginings, (re)presentations, and tropes.

An inspirational quote from Jimmy Carter's Havana speech of May 2002 opens the book. Cuba's crackdown on dissidents in April 2003 showed how little these words meant to an aging autocrat intent on strengthening the island's isolation, siege mentality, and intransigence, and to the thinking of hardliners in Cuba, Miami, Washington, and Union City.

Three chapters deal with Cuba-U.S. relations. One of the factors affecting them is the false assertion that Cuba is a security threat. A second is "intermesticity," (international-domestic issues conflated). The latter includes Democrats wanting stability but no Cuban migration, Republicans wanting political change, and other factors such as lobbying, Cuba's attack on U.S. civilian planes, the Helms-Burton Act, charges of drug trafficking, *beisbol* diplomacy, and remittances.

Two chapters address Canada and Cuba, the major Cuban issues being its security agenda and army. The Canadian issues also reflect "intermesticity." For example, Canadian decision makers denounce the Helms-Burton Act as extraterritorial, morally unjust, and a violation of NAFTA. They try to address human rights on the island by implementing policies based on constructive engagement, a concern for dissidents, and an effort to avoid double standards.

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These policies are partly the result of trade concerns and are pushed by Sherritt International, the Canadian business community, and monetary interests in Cuban investments. Canada's Reform Party influences the Prime Minister's decision to slow down constructive engagement, "putting ice in the middle" (p. 42). The influence of these conservatives is partly offset by the role of 380,000 Canadian vacationers in Cuba and their impact on Canadian polling data concerning foreign policy. The same decision makers never miss a chance to design policy to "tweak" (p. 64) the United States, strengthening pride, national identity, and sovereignty. Despite these troubling trade-offs, the policy with Cuba leaves the island satisfied with its Canadian ties (little requested, few risks or costs). Canada considers itself an honest broker, exercising considerable influence because of its reputation for aid and peacekeeping. Influence, example, credibility, and reputation—that is, Joseph Nye's "soft power"—usually exemplifies Canada's policy, contrasting strongly with U.S. behavior toward Cuba, which is too often deeply unseemly and needlessly crass.

A final concern of one chapter (pp. 113, 125) is how Cuba might become a model for economic growth—that is, Jorge Castañeda and Roberto Mangabeira Unger's "Latin American Alternative." Might the island create such a model based on its major earnings—tourist dollars, *jineteros*/sex workers, entrepreneurial Havana hustlers, and remittances? Given what's going on across the island, the prospects seem grim.

Many chapters include predictions about the countries' relations. Based on ideas on p. 68 ("... human rights remains bilaterally compartmentalized ...") and p. 144, friends and foes of Fidel Castro might want to draw on inspiration from Jimmy Carter's speech. A century of friendship between the United States and Cuba deserves better than to allow the two countries to muddle through more of the same: U.S. meddling in Cuba's domestic issues and the Castristas sticking their thumbs in "Tío Sam's" eye with gleeful shouts of "*Bajo el imperialismo yanqui!*" Emboldened by the vision of the Pope and Jimmy Carter, those of us looking for reconciliation between Cubans and Cuban expatriates in the United States, Mexico City, Madrid, and elsewhere, and those on the island might dream about Canada and Mexico deepening their North American partnership with the United States, designing an effective trilateral policy to help the United States and Cuba address their differences. Indeed, wielding soft power, Canada and Mexico could ask the OAS to broker a compromise between the United States and Cuba. OAS members could present Cuba with a democratic and electoral reform strategy that it could follow if Washington ended the *bloqueo*/embargo.

Consult this book. It might help everyone to "imagine" a less-hostile future for Washington's relations with Havana.

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Reckoning With Homelessness *by Kim Hopper. Ithaca, NY, Cornell University Press, 2003. 271 pp. Cloth, $49.95; paper, $19.95.*

In the 1980s, New York City homelessness escalated to a level not seen since the Great Depression. With the authority and expertise that only a longtime advocate has, the anthropologist Kim Hopper traces the evolution of this crisis, portraying the particular experience of homeless men from the turn of the century to the present day. But not only does *Reckoning With Homelessness* give a detailed account of the history of homelessness and homeless advocacy, it also addresses theoretical issues surrounding the problem, exploring shifting public attitudes toward "vagrants" and analyzing how changing perceptions of the homeless have affected advocacy and the treatment of the issue in general. Indeed, the strength of Hopper's text lies in its multidisciplinary approach to the topic: he seamlessly blends elements of history, theory, ethnographic fieldwork, and anecdotal stories to present a thorough picture of a century of American homelessness.

Hopper begins with a detailed account of the history of "visible poverty" in New York City, following with a careful exploration of the word "homeless" itself. Within a sociological framework, he examines how homelessness initially began to be viewed as a social problem. Beginning with the perception at the turn of the century that men without ties were thought to lack norms as well, Hopper traces a century of public attitudes toward homelessness, paying close attention to cultural representations of the homeless. He notes the "street style" fashion trend that came into vogue around the time that the crisis escalated in the 1980s and quotes directly from media sources such as the *New York Times.*

Hopper devotes the middle section of his work to an examination of fieldwork and framework. Through anecdotal stories and careful accounts of methodology, he describes several ethnographic studies of homeless men in the 1980s. Direct quotes from both homeless men and researchers provide a nice contrast to the ethnographic information and save the text from becoming too tedious for readers not involved in direct research. Readers may notice, however, that although the studies themselves are interesting, they are also out of date, and it may be difficult to recognize their relevance. For that reason, this book may be most suitable for those looking to embark on in-depth research on homelessness; although dated, these ethnographies are useful in that they describe both the pitfalls and the successes of conducting such research on the homeless population, information of value to anyone planning to do similar studies.

Part of the strength of Hopper's text is that he approaches homelessness from a distinct, rare perspective, ultimately turning the tables and demanding that the reader, indeed the general public, examine his/her own perceptions of homelessness. Hopper encourages the reader to ask not what it is about these people that caused their homelessness, but what about us as a society leads us to ignore, then banish, such signs of visible poverty. Likewise, Hopper tracks how advocacy on behalf of the homeless has been shaped by public attitudes and prejudices toward entitlement and poverty.

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In 2004, shelters are once again operating at capacity and New York City is again experiencing a resurgence of the homeless crisis. For this reason, *Reckoning With Homelessness* is timely, as advocates, researchers, and concerned citizens alike may glean lessons from one man's life's work. The reader will come away with the disturbing realization that our efforts today mirror efforts made at the turn of the century; rather than attacking the root causes of homelessness and addressing poverty in any meaningful way, we are instead more concerned with its visibility and with ensuring that the public does not see evidence of destitution. Ultimately, Hopper concludes that our efforts thus far have amounted to no more than the short-term gain of removing visible poverty from the streets. Such measures fall far short of addressing the actual roots of poverty, and this text challenges its readers to not only think harder about their own attitudes toward destitution, but to also come up with real, meaningful solutions to this pervasive issue.

RALPH NUNEZ
Homes for the Homeless

Entertainment and Politics: The Influence of Pop Culture on Young Adult Political Socialization *by David J. Jackson. New York, Peter Lang Publishing, 2002. 167 pp. Paper, $24.95.*

Much has been written about the impact that entertainment television, packed with stories about crime and sexual misbehavior, may have on the behavior of young Americans. That makes David Jackson's focus on a different aspect—the influence of entertainment media on political beliefs—particularly welcome. Jackson, who teaches at Ohio's Bowling Green State University, surveyed 17- to 29-year-old first-year university students about their entertainment preferences in music, television, and movies. He also used open- and closed-ended questions to inquire about their own and their parents' political attitudes and their perceptions of the political attitudes of their favorite entertainers. Not surprisingly, the survey showed that popular culture interacts with parental and peer influence. It largely reinforces pre-existing values of either openness to or rejection of the nontraditional lifestyles that dominate entertainment offerings.

Nonetheless, young people raised either with little parental supervision or by strict parents may be converted to media values when children have moved beyond parental control. Youths raised by parents who encouraged them to make their own choices are least likely to be influenced. They are selective about accepting new values, making it difficult to predict their ultimate orientations. Jackson points out that the political issues that dominate entertainment media revolve largely around social issues such as disadvantaged minorities, the role of women, or changing sexual mores. Choices are framed in terms of instant versus delayed gratification, rather than a left/right political spectrum.

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One of the most interesting aspects of the book for anyone beyond age forty is Jackson's discussion of the themes in music, television shows, and movies that the under-thirty crowd likes. He gives interesting cameo accounts of the themes and plots of dozens of movies and television shows. Jackson considers music to be the most influential form of entertainment because young people spend the most time and money on it. This is why there are whole chapters on the sounds, lyrics, and influence of rap music, alternative rock, classic rock, and country music.

The issue of causality is the Achilles' heel of the book. Jackson cautions the reader repeatedly about the precariousness of causal claims. But such claims are sprinkled liberally throughout the book, and the research design encourages the author to make causal linkages. Subjects are classified according to their entertainment preferences, and their political leanings are then interpreted in line with the predicted consequences of such preferences. There is an understandable, yet nonetheless troubling, lack of clarity about the classic chicken and egg dilemma. Do previously formed political leanings drive entertainment choices, or do such choices produce these leanings? Jackson says little about what makes young people choose certain forms of entertainment and focus on particular features beyond mentioning that they find it enjoyable to participate vicariously, if not actually, in social taboos that adults berate in word but enjoy in deed.

The book will be exceptionally useful in undergraduate courses because it provides a concise review of political socialization and learning theories, including the small number of earlier studies that examined the impact of entertainment media. Jackson also excels in explaining the statistics that he uses. He is least persuasive when, in the end, he hedges his bets about the impact of entertainment offerings. His conclusions mirror those of Bernard Berelson ("Communication and Public Opinion" in Wilbur Schramm, ed., *Communications in Modern Societies*, Urbana: University of Illinois Press, 1948, p. 192), who said, "Some kinds of communications on some kinds of issues, brought to the attention of some kinds of people under some kinds of conditions, have some kinds of effects." Very true, of course! But not terribly satisfying!

DORIS A. GRABER
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Rediscovering America's Sacred Ground: Public Religion and Pursuit of the Good in a Pluralistic America *by Barbara A. McGraw. Albany, State University of New York Press, 2003. 288 pp. Cloth, $73.50; paper, $24.95.*

Barbara McGraw's *Rediscovering America's Sacred Ground* is a methodical attempt to bridge the gap between right and left in the debate over the philosophical foundations of and best direction for American civil society. Her book

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is designed for the educated general public not totally familiar with the subject and for an academic audience. McGraw lays out her arguments clearly and cogently, moving through history and among the debris of heated discourses among the religious right, secular left, and those seeking to accommodate multiple perspectives (with some difficulty) concerning American self-identity and political philosophy.

The book is organized into two sections: one, a historical exploration dedicated to the "rediscovery" of "America's Sacred Ground," the political theology underlying American civil society; and the other, an application of the tenets of this foundation to the contemporary debate on religion and moral values in public life, especially through the rhetorical lenses of three parties to the debate—the secular left, the religious right, and the "accommodationists" (p. 5).

McGraw's voice is articulate and strong, challenging the reader to consider the commonalities often unnoticed between the right and left in the United States. She elevates the discussion beyond the usual claims regarding the legitimate heirs of the American Founders's unique vision of a free and civil society to the consideration of the fundamental nature of an America to which we have apparently forgotten our connection. As America struggles to make sense of its self-identity after the Cold War and in the wake of September 11, 2001, we are aware of the "multifarious beauty of the diversity of our people" (p. 3) and the growing economic, military, and political influence of America internationally. This awareness creates a need to know who we are as a people, as a nation.

The conflicting visions of America as a "melting pot" and as a domain for multiculturalism became more "combative" in the late twentieth century, largely fueled by the political emergence of the "Christian right," whose constituency claimed that the American political system grew directly out of the Western Judeo-Christian tradition. McGraw leads the reader through the contours of the ideological battles brewing between the religious right and the secular left, and through the rise of the accommodationists.

Manifestations of the accommodation of religion in America, the maintenance of a middle ground in the debate, is evident in the "faith-based initiatives" of George W. Bush and in the "charitable choice" provisions of Clinton's Welfare Reform Bill of 1996 (p. 8). McGraw notes that there seems to be a greater voice for religion in the public debate over issues of morality, a development welcomed by religious leaders and writers and decried by the secular left. The left argues that only a strict separation of church and state can accommodate America's growing pluralism, especially religious pluralism, and warns of strife if America is increasingly reliant on the views of the religious right for its self-identity.

McGraw considers the nature of our fundamental American identity, opening with an exploration into the core values of American civil society, a foray that leads to the rediscovery of a sacred moral foundation elucidated by John

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Locke's political gospel and enacted by America's founders. McGraw examines the "original intentions" of the Founders (p. 16), intentions that, she argues, have been utilized in a piecemeal fashion by various constituencies eager to make their point in the culture wars.

The "sacred foundations of the American system" are grounded in a theology she terms "America's Sacred Ground" (p. 17). In McGraw's view, one path to locating America's Sacred Ground is through the recognition of a basic moral divergence in America between the good (the moral good) on the part of those who "seek to impose their will" (understood as God's will) on the people, and, on the other hand, the way to the good through the workings of "America's Sacred Ground" (p. 17). McGraw "rediscovers" what the Founders meant by "freedom," a basic freedom of conscience to be and to do good. From this perspective, it becomes apparent that all sides in the debate share a common moral language.

Locke believed that civil government is a worldly concern, religiously grounded. The goals of civil government, the realization of the common good, are informed by the social contract, realized through reason by appealing initially to God. The denial of God implies a denial of the basic foundations of civil human society. Religion, in this sense, serves as the orientation for moral behavior. Civil government, oriented by the religiously-themed social contract, preserves civil rights for individuals. This is a sacred power focused on keeping the peace, ensuring individual rights, and emphasizing tolerance.

Churches are to have "no authority whatsoever over civil government" (p. 38) or any worldly matters. In this, we find a revisioning of the current debate regarding the separation of church and state. The American political system established by the Founders is religiously grounded, just as the American Revolution was, and both follow the philosophical path blazed by Locke. The Founders guaranteed Americans an inalienable right to the freedom of conscience and the context of American civil society in which to practice that freedom of conscience. Both the context and the practice comprise the sacrality of civil society, what McGraw terms "America's Sacred Ground."

The rediscovery of America's Sacred Ground, a unified vision of civil society driven by individual freedom of conscience to promote the "good," is essential to the quest of retaining our basic freedoms. America, lacking the orientation codified in America's Sacred Ground, risks the survival of fundamental "sacred civil rights" (p. 182).

McGraw has redrawn the lines of the debate, and her book should serve as an essential resource for those seeking to understand the culture wars and make sense of the current American religio-political landscape.

JOHN BAUMANN
University of Wisconsin, Oshkosh

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Religious Pluralism in America: The Contentious History of a Founding Ideal *by William R. Hutchison. New Haven, CT, Yale University Press, 2003. 276 pp. $29.95.*

Based originally on lectures given in Sweden in 1996, this lively and synthetic discussion of religious pluralism has the historical sweep and telling detail that mark William Hutchison's earlier studies of theological modernism and the missionary impulse in American Protestantism. The strength of this book lies in its initial premise that the main conflict in America has rarely been between religious toleration/pluralism and a unitary ethnic and Protestant nativism. The real conflict has been within pluralism itself, stemming from the inherent assimilative and participatory values contained within the pluralist ideal. These values can range from a merely formal and constitutional standard of equal religious freedom to thicker requirements of a roughly proportionate participation in American national life and culture. No matter the standard, however, in every period of our national life we have tended to celebrate "the myth of pluralist success" (p. 16). This is a myth because every pluralist regime in our history includes and assimilates even as it excludes and marginalizes.

As Hutchison reviews the structure and workings of each period of religious toleration and inclusion, this logic of success-as-subversion plays itself out. Each settlement proclaimed as a final or near victory for religious freedom elicits new charges of hypocrisy, exclusion, and failure. And every "disestablishment" that results requires a reestablishment on a new basis and with a [slightly] new leadership. This is the case because each pluralist settlement is a historical regime, the product of particular national political and cultural elites who define the reach and terms of pluralist inclusion. Hutchison clearly recognizes, however, the continuous leading role played by successive liberal-evangelical and modernist Protestants in shaping this succession of settlements. Indeed, from the eighteenth through the mid-twentieth centuries, an assimilative religious pluralism was a mainstream Protestant *project*, proof that the American nation, not particular churches, was the site of a continuous, progressive, and enlightened revelation eventually accessible to all people of all faiths. Reform Jews and Americanist Catholics would come to join in this project because the tests for inclusion were behavioral, not creedal, national social gospel, not biblical or sacramental. Indeed, the institutional locations of these successive establishments were not churches at all, but national colleges and universities, ecumenical federations, professional associations, higher journalism, reform and charitable societies, foundations, and, today, even governmental cultural bureaucracies. To be sure, full membership in these voluntary establishments entails the cost of disavowing many church-centered beliefs and religious practices, so successful establishments are occasions for resistance, be it Protestant fundamentalism, Orthodox Judaism, or Catholic rejection of the "Americanist" heresy.

Hutchison's gently ironic reading of the story of American religious pluralism is forgotten as he turns to the present. Here, the hope for a victorious

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"civil religion of pluralism" (p. 234) is not accompanied by the recognition that this religion, too, requires an established priesthood, this time as a sort of universal overclass ruling an abstract empire of multicultural inclusion. This informal establishment, like all earlier ones, pretends to stand objectively above the battle, even as it maintains its own distinct identity, institutional locations, and ideological commitments. Like benign colonial administrators everywhere, its administrators recruit and train handpicked co-administrators from the recognized tribes, adjudicate the terms of their inclusion, and ruthlessly exclude those who do not fit (Clarence Thomas and Pat Robertson come to mind). In short, this new regime, like that of all earlier cultural-religious settlements, would also have to guard its borders against the populist forces of democratic and electoral politics, whether energized by the religious right or the post-colonial and post-modernist left—even as this regime, like all earlier establishments, claims the authority of moral philosophy, social science, common sense, and the Constitution.

The academic study of religion and American politics has shifted from the paradigm of church history to that of religious studies. Its major journal, *Church History*, has not only left Chicago for Duke, but has added to its title, *Studies in Christianity and Culture.* Hutchison's historical view incorporates many of these new insights; his reading of the contemporary situation does not.

ELDON J. EISENACH
The University of Tulsa

Faith-Based Initiatives and the Bush Administration: The Good, the Bad, and the Ugly *by Jo Renee Formicola, Mary C. Segers, and Paul Weber. Lanham, MD, Rowman & Littlefield Publishers, Inc., 2003. 224 pp. Cloth, $68.00; paper, $23.95.*

President Bush's faith-based initiative is extremely controversial, given the explosive combination of religion and politics in current American politics. On almost every major moral issue, the two American parties appear to be sharply divided between the more conservative and religious Republicans and the more liberal and secular Democrats. Thus, it should not be surprising that when President George W. Bush proposed in January 2001 to seek out a way to provide government-paid social services through religious organizations, fireworks ensued.

Three political scientists with long histories of researching religion and politics in the United States have joined together to write *Faith-Based Initiatives and the Bush Administration: The Good, the Bad, and the Ugly.* Reading the foreword of this book is essential to understanding the authors' attitudes regarding the separation of church and state in contemporary America and the importance of maintaining current levels of separation in the new century. The subtitle, *The Good, the Bad, and the Ugly*, identifies the three authors' positions on the dangers of faith-based initiatives.

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Jo Renee Formicola ("the Good") presents the proinitiative perspective and argues for the good outcomes of such an initiative. Paul Weber is deeply concerned about the possible negative impact ("the Bad") of allowing a greater entanglement of religion and government. Finally, Mary C. Segers is conflicted as she discusses the politics of the initiative and the way in which the Bush administration has tried to establish it without congressional support ("the Ugly").

One of the big questions that this book addresses, but does not answer, concerns the real motivations of the Bush administration in pushing this extremely controversial proposition. Is the president, who holds fundamentalist Christian beliefs, the primary force behind this initiative, in that he sincerely believes that the merging of government and religion would be a good thing at this point in American history? Does he believe that our nation's social problems can only be effectively addressed within a religious framework? Or, should one conclude that this is just another clever ploy by White House Political Director Karl Rove to cement Bush and the Republican party to the fundamentalist Christians—a group becoming more and more crucial to GOP election victories with each passing year. After finishing this book, one wishes that it had presented more analysis of the politics of this initiative rather than focusing on an event-by-event discussion of how, although the initiative failed in Congress, it has been implemented by several presidential executive orders.

This short book (about 180 pages of text) opens with an introductory chapter, followed by a chapter by each author that presents his/her opinions regarding the initiative, followed by a jointly written chapter presenting some concluding thoughts. Two authors, Jo Renee Formicola and Mary Segers, come out of the Catholic tradition, having written a number of books on Catholic political questions, and largely echo the U.S. Catholic Church's support of Bush's plan, with some reservations. Paul Weber is a constitutional law scholar who has written extensively on the First Amendment religion clause and its role in American politics. He provides a good discussion of the constitutional issues of such entanglement. The final chapter contains a reasonable summary of the major arguments pro and con on the question, but one is left with the impression that the authors, or at least two of the three authors, support a faith-based initiative as a realistic way to deal with the nation's social issues. The authors conclude that the future disposition of this issue will depend on coming Supreme Court nominees, the party control of Congress, and the winner of the 2004 presidential election.

Who says American politics isn't fun? Knowing the careers of the authors helps the reader anticipate where this book is going, but it is nonetheless a good summary of the major arguments regarding this very important issue.

RONALD J. HREBENAR
University of Utah

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Environmental Peacemaking *edited by Ken Conca and Geoffrey D. Dabelko. Washington, DC, Woodrow Wilson Center Press, 2002. 200 pp. Cloth, $35.00; paper, $17.50.*

Over the past two decades, a large body of research has emerged that examines possible links between environmental degradation and violent conflict. Although most scholars appear to doubt that environmental change has been or will soon become a primary cause of war between states, there is increasing evidence that environmental change can lead to violent political action at the local and regional levels, particularly when it exacerbates pre-existing local tensions based on class, religion, depravation, ethnicity, or political oppression.

Environmental Peacemaking builds upon this discussion but turns the traditional questions on their heads. Thus, rather than examine if, how, and when environmental change can augment causal factors known to produce conflict, Ken Conca and Geoffrey Dabelko ask if cooperation to address environmental problems can instead make violent conflict less likely by acting as catalyst and conduit for reducing tensions, broadening cooperation, and promoting peace.

Conca and Dabelko posit two broad hypotheses on how this could occur. In the first, environmental cooperation improves the overall climate of intergovernmental relations, including helping to produce a more robust contractual environment for intergovernmental bargaining. Within this pathway, Conca and Dabelko identify two core research questions: can institutionalized environmental cooperation thwart the catalytic or triggering processes associated with eco-violence? And can such cooperation create positive side effects such as trust building, longer time horizons, identification of mutual gains, or simply a growing habit of cooperation?

In the second pathway, cooperation to address environmental issues creates or enhances cross-border societal (nonstate) linkages. Here, Conca and Dabelko identify three key research areas: the potential for environmental cooperation to deepen and broaden trans-societal linkages; the potential for regionally grounded identities to emerge, become strengthened, and/or contribute to positive interdependence as a result of environmental cooperation; and the potential for environmental cooperation to move state institutions in directions conducive to cooperative interaction, democratic accountability, and peaceful dispute resolution.

Case studies from six different regions—the Baltic, South Asia, the Aral Sea basin, southern Africa, the Caspian Sea, and the U.S.–Mexico border—explore these and related issues. The editors attempted to pick cases that had significant differences in the prevalence, depth, and nature of their conflicts and that were situated in regions with sufficiently fluid security situations so that one could at least imagine that environmental cooperation could act as a catalyst for peace.

Although quite informative, the case studies gathered in this volume are not sufficiently numerous, geographically comprehensive, or ecologically diverse to serve as a formal test of the environmental peacemaking propositions put forth

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in the introductory chapter. The editors recognize this and are thus wary of drawing firm conclusions. At the same time, the cases studied do allow the editors to gain insight into their core questions and to refine several of their premises. Indeed, in at least some of the cases, environmental cooperation did play a role in forestalling violence in one form or another and augmented intergovernmental or societal linkages. The cases also argue that, at least in these instances, environmental cooperation is "high politics" rather than low-level "functional" cooperation.

In sum, this book provides a welcome addition to the existing literature on international environmental politics, international cooperation, and environment and security. Although a preliminary study, it deserves an attentive audience and extensive follow-up research.

DAVID LEONARD DOWNIE
Columbia University

Bringing Society Back In: Grassroots Ecosystem Management, Accountability, and Sustainable Communities *by Edward P. Weber. Cambridge, MIT Press, 2003. 336 pp. Cloth, $67.00; paper, $26.95.*

This excellent and important new work presents nothing less than a new form of governance for local environmental management. The book includes three case studies of efforts in the rural western United States to develop a local means of resolving conflicts over the use and protection of natural resources. This "Grass Roots Ecosystem Management" (GREM) is an attempt to bring environmentalists, developers, loggers, business leaders, and government officials together to develop compromises that allow for both environmental protection and business use of natural resources.

The book focuses considerable attention on the need to reconcile this new form of governance with the requirements of democratic accountability. The "place-based" advisory groups formed under GREM have no formal authority and yet have enormous legitimacy and influence at the local level. The book effectively demonstrates that these local negotiations are no threat to representative democracy and may in fact be a healthy corrective to the tendency for general principles established at the national level to be distorted and misapplied at the local level. The book details the need for place-based mechanisms for interaction and negotiation to augment and complement national rule making.

Weber correctly notes the tendency for national policy to be disaggregated in federal bureaucracies, creating conflicts and disconnects when implemented in specific places. For example, implementation of Bureau of Land Management policies designed to promote sports fishing can result in the pollution of drinking water. Sewage treatment plants can cause air pollution. In the author's view, GREM provides a geographic-specific venue for attempting to integrate

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these diverse and sometimes conflicting mandates. Although this is true, he does not sufficiently acknowledge the reason for and importance of this reductionist tendency in policy making. Environmental policy is extremely complex. If problems are to be understood, they must be reduced to their component parts, acted on, and then, hopefully, integrated. If integration is to take place, problems of coordination must first be identified and then resolved. If the body of environmental law that created the local conflict discussed in this work had not been in existence, GREM would not have developed because there would have been no national environmental regulation to cause the conflict in the first place. The only governance would be rules of the "free" market, and the result would be the short-term gains and long-term destruction that result from resource exploitation. Environmentalists would not have the clout to find a seat at the negotiating table.

This small quibble aside, this is a sophisticated, beautifully written analysis of an important, little-researched trend in environmental politics. Weber's conceptual chapters are masterfully developed and then applied with great skill to the three case studies. These local mechanisms appear to have an impressive ability to counter symbolic political conflicts that persist at the national level. In Washington, these disagreements are central to the identity of conflicting organizations. Industry lobbyists, environmental advocates, and governments obtain resources based on their place in this conflict. At the local level, these symbolic disagreements become real and sometimes physical conflicts that pit neighbor against neighbor. GREM provides a venue for developing what this book terms "win-win" solutions to local environmental problems.

One reason that these "win-win" solutions can be developed is that it is becoming increasingly apparent that the trade-off between environmental quality and economic development is a false one. Without a healthy and productive biosphere, there is no long-term wealth for anyone. Environmental protection is not an obstacle to economic development; it is a prerequisite for such development. The participants in GREM have figured this out. This book provides a superb description and analysis of how and why this happened in three communities in the western United States.

STEVEN COHEN
Columbia University

Social Movements and Democracy *edited by Pedro Ibarra. New York, Palgrave, 2003. 288 pp. $55.00.*

In authoritarian settings, the role of social movements in promoting democracy by provoking and shaping transitions is obvious. In democratic settings, however, the relationships between movements and democratic governance are more complicated and far less intuitive: why protest in states that afford citi-

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zens easy and meaningful access to political influence? Don't the sloppiness, emotion, and volatility of social movements threaten the institutions that facilitate democratic governance? This collection addresses these complex questions head-on, commencing with a set of theoretical claims from Pedro Ibarra, followed by focused chapters on relevant themes by top (mostly European) social movement scholars.

For Ibarra, the now seemingly ubiquitous social movements address democratic deficits in advanced industrialized states, providing participants with, not only alternative venues for making political claims, but also a community within which participants develop an alternative social capital, as well as political and social skills that can translate into conventional political assets. Beyond that, social movements can broaden the policy networks that actually govern, bringing in both new ideas and actors. Finally, social movements can affect public opinion, problematizing current policies and social conditions, and offering alternatives. The extent to which a movement actually promotes democratic processes and outcomes varies by case and context.

Of course, the growth of democracy and civil liberties made the development of the contemporary social movement possible, as Charles Tilly notes in his chapter. At the same time, some movements organize around explicitly antidemocratic claims (for example, fascists, anti-immigrants), while others lead to undemocratic consequences, primarily by promoting repression. Tilly maps the range of possibilities, emphasizing an analytic focus on the relations between movements and the institutional actors they challenge, and sometimes enable. The chapters follow Tilly's emphasis, even in looking at the creation of leadership within social movements (Mario Diani) and the process of mobilizing people on the basis of identity (Klaus Eder). This common orientation helps to make the volume a coherent whole and to frame a set of questions for subsequent scholars.

The focus on context allows the authors to raise some troubling questions about the states that host contemporary social movements. Herbert Kitschelt traces out the development of social movements as an additional linkage mechanism between citizens and their states, essentially a sometime (and nonexclusive) alternative to political parties and more conventionally oriented interest groups. The more established and institutionally oriented can respond to their movement competitors, providing access to activists, even as states can provide incentives and opportunities for movements to routinize their activities and formalize their own structures. Alternatively, they can hold the line against insurgents, likely provoking more disruptive and dangerous movements in the future.

In looking at social movements in Italy, Donatella della Porta essentially describes the first outcome: increasingly "rootless" political parties take such flexible stances on policy preferences, constituencies, and ideology that social movements have become more stable vehicles for making claims on issues, such as women's rights or limiting immigration.

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Dieter Rucht offers a more troubling version of Kitschelt's second alternative. In looking at the growing campaigns against corporate-oriented "globalization" that have staged dramatic and disruptive demonstrations against targets such as the World Trade Organization and the International Monetary Fund in North America and Europe, Rucht argues that movements are responding to a new democratic deficit. By ceding authority about important decisions on commerce, the environment, and ultimately, social policy, to supranational bodies, states have invited the development of new social movements that actively seek transnational connections to redress grievances that their governments have been unwilling (or unable) to manage. These movements, he suggests, struggle against long odds, but may be the best available alternative for preserving meaningful democracy.

DAVID S. MEYER
University of California, Irvine

Rising Tide: Gender Equality and Cultural Change Around the World *by Ronald Inglehart and Pippa Norris. New York, Cambridge University Press, 2003. 240 pp. Cloth, $60.00; paper, $21.00.*

Examining support for gender equality in seventy nations, Ronald Inglehart and Pippa Norris, who have previously done pioneering work in gathering aggregate data assessing political and social change, seek to determine the factors that alter traditional sex roles. The analysis relies primarily, although not exclusively, on the comprehensive World Values and European Values Surveys, with over a quarter of a million respondents, for the extensive data collection and interpretation contained in this volume.

The authors contend that the factor most associated with the growth of more egalitarian attitudes toward women is the degree of modernization in each nation studied. Modernization brings with it increases in paid work for women and a concomitant decline in fertility, as well as significant shifts in cultural values. The central hypothesis is that the most support for gender equality exists where modernization and human development have progressed furthest, primarily in post-industrial democratic societies. The analysis develops the argument that although the distribution of income and wealth influences attitudinal change, other indicators may be as or more significant in explaining increased support for gender equality. Societies based in agrarian and religious values are most likely to retard acceptance of gender equality. The findings reported suggest that the attitudinal gap related to equalization of sex roles between agrarian and post-industrial societies is even greater than the gap between men and women within each nation.

By analyzing changing attitudes, in order to develop conclusions based on cross-national, gender-based, and generational comparisons, the authors came to several conclusions that may be surprising. According to Inglehart and

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Norris, in a reversal of previous trends in many countries, there is a significant "modern gender gap" in political attitudes among men and women, with women more likely to hold more left-leaning attitudes regarding the role of the state. They also find significant intergenerational differences, with the "modern gender gap" cleavage greatest among younger age groups in post-industrial societies. And, even in post-industrial societies, a kind of "negative" gender gap persists, with women less involved in all forms of political engagement than men. Such distinctive, gender-based differences in political activism have adverse consequences for female political leadership.

The generalized nature of the findings presented in the volume gives rise to some country-specific and some non-country-specific questions. For example, the authors promise to explain the variation in support for gender equality in such "rich" nations as Norway and Japan (p. 48) but they never do. Why does post-industrial, secular Japan stand as an exception to the trend toward increased economic gains made by women in other seemingly similar nations? The data presented also suggest that the United States demonstrates tendencies counter to the growing secularization of many other post-industrial nations, with significant impact on abortion and other social policies, perhaps challenging the relation suggested between decline in religiosity and support for gender equality. Of necessity, this book limits its attention to the role of women's movements and government policies in creating growing support for equality; these may prove to be as significant as or more significant than some of the other change-related variables presented.

In their wish to demonstrate the significance of the "rising tide" toward gender equality, the authors may occasionally overstate the extent of sex role transformations in the home and workplace, even in post-industrial societies; that is, it seems doubtful that "almost any career and almost any lifestyle is opening up to" women, as they suggest (p. 169). The precise meanings of "culture" and "cultural change" remain elusive, despite the authors' efforts to operationalize them throughout the book.

However, these queries do not alter the major contribution made by the research reported in this book; rather, they are intended to stimulate further research to supplement this important work. Inglehart and Norris have provided an invaluable and comprehensive resource with which to assess the causes and significance of gender-related attitudinal change from a comparative perspective.

JOYCE GELB
City University of New York

The George W. Bush Presidency: An Early Assessment *edited by Fred I. Greenstein. Baltimore, MD, Johns Hopkins University Press, 2003. 320 pp. Cloth, $55.00; paper, $19.95.*

The first of the early assessments, this book stems from papers delivered at a conference at Princeton University's Woodrow Wilson School of Public and

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International Affairs in the spring of 2003. The authors assembled by Professor Fred I. Greenstein, the organizer of the conference, are a virtual Who's Who of presidency, politics, and public policy analysts. Their contributions, for the most part, live up to their reputations.

After an introductory preface, Professor Greenstein begins the evaluation by examining George W. Bush's leadership style. Using the categories he developed in his book, *The Presidential Difference: Leadership Style from FDR to Clinton*, Greenstein argues that President George W. Bush has become emotionally stable after his prolonged adolescence, is self-assured, smart although not particularly curious and certainly not intellectual, well-organized, a good judge of people, an effective communicator, particularly when his words have been prepared for him, with vision, a president who has exercised his political skills most effectively within the domestic sphere.

Digging deeper into Bush's psyche, Hugh Heclo contends that the Bush family ethos has molded George W. into a well-disciplined, highly competitive political leader, one who has a focused agenda, a non-nuanced outlook, and a penchant for taking decisive action. The dangers, Heclo warns, are that Bush's vision may become truncated and closed to information that does not easily fit into it, that his self-confidence may be premised on faulty or overly simplistic world views, and that his salesmanship may interfere with his need to learn, his capacity to incorporate changes within the political environment into his decisional framework, and his ability to educate people as to the merits of his policies.

Karen M. Hult's essay explores the distinctiveness and continuities in the organization and operation of the Bush White House. She notes that despite the President's desire to impose his own stamp on the White House's structure, professionalism, and policy processes, the institution still operates more like its predecessors than a uniquely Bush creation. The continuities stem from the persistence of external expectations within the political environment in which the White House is forced to function.

The chapter on Bush's budget problem is the most critical of the volume. Alan Schick, its author, makes a very persuasive argument that Bush's tax cuts, coupled with his defense spending, are designed to starve the budget so that domestic spending will have to shrink. Pressures to spend are simply too great for a Congress, even one under Republican control, to resist. Thus, the only way to reduce the size and scope of the public sector within the domestic arena is to deprive it of its lifeblood, money. In doing so, however, the administration has expanded the already large national debt, with dire consequences for future generations and probably even for the next president.

Bush's foreign policy, particularly its unilateral, preemptive character, is subjected to a critical review by Brookings scholars Ivo H. Daalder and James M. Lindsay. After detailing the assumptions, world views, and operational principles of candidate George W. Bush and his national security advisors, the authors describe the policies that followed from them during the early years

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of the Bush presidency. Contending that events have worked to reaffirm Bush's world view that America's weakness, not strength, encouraged the terrorists' attacks, Daalder and Lindsay make the case that the administration's emphasis on regime change, such as in Iraq, and unilateralism is misplaced and may, in fact, isolate the United States from the world community, including America's allies.

John C. Fortier and Norman J. Ornstein turn their focus to Bush and Congress. They describe in considerable detail the President's legislative successes with the 107th Congress, which they attribute to his agility in utilizing both partisan and bipartisan strategies, depending on his policy objective. But the authors are leery about whether the administration's balancing act will yield the same results with the 108th, given the administration's need to emphasize domestic policy as the 2004 election approaches.

The remaining papers cast a less critical eye on the President and are more laudatory of his achievements to date. Charles O. Jones explains how George W. Bush, in the absence of an election mandate, has used the position of the presidency to enhance his political capital and public approval, although Jones also notes that there are limits to position alone serving as a continuing source of power, especially within the domestic policy arena.

In examining the polarized electorate, Gary C. Jacobson looks at the impact of the Bush presidency on partisanship. He concludes that despite the administration's strong response to the events of September 11, 2001, the Republicans's victory in the 2002 midterm elections, and the extended popularity of the President, there are no indications that the country's partisan balance has shifted or that its polarization has declined. As far as partisanship is concerned, we are where we were in 2000.

Richard Brody reaches a similar conclusion when tracing the shifts in public opinion before, during, and after the terrorists' attacks. He notes the persistence of different partisan evaluations of the President. Brody suggests that those predisposed to support or oppose Bush have seen him within the prism of their partisan perspective. The author predicts that Bush will be judged, in the end, by how well he keeps his promises and how well those promises affect the country's "peace, safety, and prosperity" (p. 244).

Former Bush staffer John J. Dilulio, Jr. concludes the appraisals with a highly favorable personal portrait of Republican president George W. Bush, whom he describes as a "democrat," with a good heart, open to diverse views. The problem is that the President becomes ensnared in and manipulated by the symbolic politics and constant campaign of the contemporary presidency. It is not his fault, but theirs. (I assume he means those Mayberry Machiavellians.)

STEPHEN J. WAYNE
Georgetown University

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Bringing Representation Home: State Legislators Among Their Constituencies *by Michael A. Smith. Columbia, University of Missouri Press, 2003. 227 pp. $34.95.*

Modeled after Richard Fenno's path-breaking book on U.S. Congress members in their districts (*Homestyle*), this work considers how twelve lower-house state legislators—nine from Missouri, three from Kansas—"define" representation through their behavior as representatives in their districts. Ten of the twelve legislators under study served city and inner- and outer-suburban districts in the Kansas City metropolitan area. Two (one from each state), added after the study began, were from rural areas. The author spent two years talking and traveling with legislators, attending meetings and otherwise "soaking and poking" in the districts under study to gather the information upon which this book is based. His love of legislative politics is evident in the work. The resulting book is very well written, although the identifiers used to preserve the anonymity of the members under study make reading and internal comparison more difficult.

Smith focuses his attention on how each of the legislators he studied performed four tasks of representation as defined by Malcolm Jewell in *Representation in State Legislatures*: "communication with constituents, policy responsiveness, allocation of resources for the district, and service to constituents" (p. 18). He finds three styles of representation that will no doubt be familiar to students of legislatures. Burkeans "deliberate, decide . . . [and] . . . justify" (p. 23). Advocates, some focused within the district, others beyond it, "place issues on the agenda instead of waiting for them to bubble up" (p. 56). Ombudspersons are often mediators; they ". . . let issues bubble up, but stay involved in resolving controversy" (p. 128).

Smith found that state representatives, unlike congressional "lone wolves," were likely to appear and act together at the district level. Those with political ambition especially valued the "spillover" publicity (outside their districts) that might be generated in this way. Among the most interesting findings of this work are the linkages identified among district characteristics, political ambition, and the style of representation legislators choose, their different personalities notwithstanding. Burkeans, Republicans from more affluent, socially stable, politically safe districts, evinced little desire to move up politically. In contrast, most Advocates, all but one of whom harbored hopes for political advancement, were Democrats from politically safe, public resource-demanding cities and inner suburban areas. Of the two of six Advocates who were Republicans, one focused on citywide growth and development and moved on to an at-large council seat with support from Democratic colleagues. The other, a teacher with strong support from fellow educators, had his eye on a statewide run for Insurance Commissioner from a base as chair of the House Insurance Committee. Finally, Ombudspersons—some with ambition, some without—tended to be from relatively socially stable but politically competitive districts.

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Smith offers a modification of Fenno's concentric circle, a graphic presentation of a representative's perception of his or her district (p. 178) that would have greater value had it been explicitly grounded in the earlier chapters. The discussion of the effect of term limits at the close of the book adds little to the analysis. More systematic emphasis might have been placed on how members who depart from the party mainstream on substantive issues of local importance seize opportunities in their districts to reinforce linkages with their colleagues in the capitol on symbolic matters (for example, a moderate African-American Republican legislator taking a strong conservative stand critical of Bill Clinton's sexual liaison with Monica Lewinsky).

Twelve cases from a relatively constrained geographic area provide a narrow base for generalization. Although this book does not substantially advance knowledge about legislative representation, it does enrich our understanding with additional evidence drawn from district-based experience at the state level.

GERALD BENJAMIN
State University of New York, New Paltz

Stalemate: Causes and Consequences of Legislative Gridlock *by Sarah A. Binder. Washington, DC, Brookings University Press, 2003. 202 pp. Cloth, $39.95; paper, $16.95.*

Long before President Harry Truman ran against the "Do Nothing" 80th Congress, concerns about delay and deadlock in Congress were evident in both public and scholarly discourse. The concerns were there at the Constitutional Convention, reflecting the Framers's dismay over inaction under the Articles of Confederation. Over many decades, much of the discussion on the part of political scientists regarding the role of responsible parties and party government has reflected a distaste for "the deadlock of democracy," in James McGregor Burns's term. The term has changed from "deadlock" to "gridlock" in recent years, but concerns about it have become even more frequent during an era of frequently divided government and increasing partisan and ideological acrimony.

Sarah Binder's book, *Stalemate*, is a slim volume on the subject: 133 pages before appendices, endnotes, and index. But don't be misled by the size of the book. Binder has produced a deep and insightful work that ranges from the views and expectations of the Framers to the unexpected development of an activist and vibrant Senate and the rising role of parties to the contemporary Congress, offering a slew of hypotheses about what stalemate is, when and why it occurs, and a creative and rich data analysis of more than five decades of congressional performance with which to test them.

Binder looks systematically at the role of bicameral differences, divided government, party polarization (the proportion of moderates relative to the median ideological gap between the parties), party mandate (the length of time

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a new congressional majority has been out of power), and the policy context, including budgetary health and the national mood. She finds, among other things, that policy differences between the House and Senate matter in a variety of contexts; that policy moderation makes stalemate more likely; and that party polarization, even in settings of single party control, is counterproductive to major policy outputs. Party electoral mandates seem to have little bearing on stalemate; neither do improved fiscal situations or public appetite for activist government.

As for divided government, while acknowledging David Mayhew's findings in *Divided We Govern* that major policy achievements vary little between periods of united and divided government, Binder looks beyond the numbers of laws enacted to the number of items on the policy agenda. She finds that, in this context, divided government does lead to greater stalemate; as she puts it, divided government is "a force that erects another barrier in the legislative process; it traps bills that might have been enacted had control of government been unified in a single political party" (p. 67).

Binder reflects more broadly on the dynamics of legislative action. She finds, for example, that divided government also leads to more and longer missed deadlines on budget agreements. One interesting finding is that a president wins more favorable legislative results when he stresses an issue during a period of divided government than he does in one-party settings; her speculation is that under divided government, presidents scale back their priorities and focus on areas with a greater chance of success. She also finds that retirement rates in Congress do seem to increase during eras of legislative stalemate, confirming the notion that if Congress becomes less fun, members tend to bail out. But gridlock does not motivate voters to oust their incumbents, thus leaving little electoral incentive for members to do anything about it.

This is a fine book filled with insights: a case study in careful, systematic, and nuanced research that should be read by anyone interested in legislatures and in policy making generally.

NORMAN J. ORNSTEIN
The American Enterprise Institute

Overruling Democracy: The Supreme Court vs. The American People
by Jamin B. Raskin. New York, Routledge, 2003. 290 pp. $27.50.

This provocative lawyer's brief challenges the ways in which constitutional decision making impedes participatory democracy in the United States. Raskin argues that "the unifying philosophy of the Rehnquist Court is not federalism, judicial restraint, strict textualism, or original intent but hostility to popular democracy, especially when it involves empowerment of racial and political minorities" (pp. 6, 7). This thesis is advanced in separate chapters on *Bush v. Gore*, denials of the right to vote, the "racial double standard in redistricting,"

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restrictive ballot access, the exclusion of third party candidates in political debates, the structure of public education, corporate power, and flag burning. Raskin ends the book by calling for a series of constitutional amendments—including a "right-to-vote" amendment and one providing for "equal public education for democratic citizenship"—which he believes would be consistent with our national commitment to democratizing our inherited constitution.

The book's diatribe against the Court is more persuasive in some chapters than in others. The *Bush v. Gore* chapter provides a sharp summary of arguments for why the decision should be viewed as an indefensible judicial intrusion into a democratic political process. Raskin's critique of the conservative justices' decisions in recent redistricting cases is very effective, even if the lines of argument will be familiar to most court watchers. More innovative are his arguments against judicial decisions that uphold "laws that discriminate against third parties by keeping their candidates off the ballot, out of debates and off the public's radar screen" (p. 92). Raskin will force many readers to take these issues much more seriously and to rethink their position on the various rationales in support of an electoral system that is designed to dramatically restrict voter choice. He also revitalizes older constitutional debates about the status of corporations in the political system—not just campaign finance but also the question of when people should have first amendment rights on corporate property.

However, at other times, Raskin is too quick to blame the Court and not quick enough to give the Court credit when democratic values are protected. He opens his chapter on the right to vote by chastising the Court in *Bush v. Gore* for saying that the Constitution establishes "the state legislatures' absolute power to choose presidential electors without public participation if they so desire" (p. 32), but this seems less the fault of the justices than of the Founders. Raskin makes a strong case for why residents of the District of Columbia, territorial subjects, and former felons deserve full voting rights and representation, but it is uncharacteristically simple-minded of him to have left the impression that these antidemocratic practices are examples of the Court's assault on democratic values. When the Court does promote those values, as with the flag-burning cases, Raskin acknowledges the decisions but makes no effort to explain how they fit into his broader diatribe.

Still, these are quibbles, triggered by the unnecessary choice to characterize the debate simply as "the Supreme Court versus the American people." If we set aside that framing, we are left with a smart, thorough, and proudly partisan plea for participatory democracy in the United States. If you are in the mood for a more temperate analysis of the conflicts between democracy and constitutional politics, you might prefer Robert Dahl's *How Democratic Is the American Constitution?* But if you want to know how a feisty lawyer applies these themes to a broader and more contemporary set of issues, Raskin's discussion is for you.

HOWARD GILLMAN
University of Southern California

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One-Car Caravan: On the Road with the 2004 Democrats Before America Tunes In *by Walter Shapiro. New York, Public Affairs, 2003. 220 pp. $25.00.*

By now, the 2004 presidential primary campaign—the most front-loaded and compressed in recent American history—is over. Few may be interested in reading about the early days of this campaign and about players who are no longer in the running. If your desire has not waned, however, you are likely to discover in this book a rich, entertaining collection of first-hand accounts and insights about the leading Democratic presidential contenders early in the campaign cycle as they begin to pursue the nomination for the presidency.

Walter Shapiro conducts his research (road trips with the candidates) between mid-2002 and mid-2003, starting long before the primary campaign is in full swing and ending long before it is over. This approach may seem odd at first glance (later-breaking developments, like General Wesley Clark's entry into the race, are excluded entirely), and one may be tempted to think that the author, a political columnist for *USA Today* who has covered political campaigns for three decades, is motivated to be first to publish a book-length account of the beginnings of the 2004 Democratic primary race. But a less myopic view suggests that there is some value to having access to assessments about the candidates that are uncolored by the eventualities of the results.

The great strength of the book, in addition to the author's brilliant, fair, and uproarious journalistic style, is its focus on describing the campaign process as it evolves, uninfluenced by the conclusion. Shapiro cleverly showcases the realities, complexities, and intensity of not only the candidates but also the political process itself. Armed with impressive access to the candidates he includes (Dean, Kerry, Gephardt, Lieberman, Edwards, and, to a lesser extent, Sharpton), he provides powerful portraits of the leading contenders' personalities. He demonstrates that the political process, much like the candidates that operate within it, is flawed, imprecise, and more intimate than we may have imagined, especially in the early phases of the campaign, when candidates decide to run, begin to raise funds, and start to build campaign organizations. Shapiro attempts to trace the candidates' transformation and growth as the campaign progresses.

From a social science perspective, however, there is no sound theoretical or analytical framework that guides the project. The author hopes that by giving us glimpses of the candidates' early behavior, he will enable us to glean accurate insights into their character and potential. The ultimate goal, I suppose, is that the reader can extrapolate from these peeks and leap to conclusions about each of the candidates' strengths and weaknesses and how these may affect their ability to win and to govern. This may be too lofty a goal and one that Shapiro achieves with limited success.

Shapiro tries to capture the intangible qualities and attributes of each of the candidates. His task, as he puts it, is "to expose the person behind the pub-

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lic mask" (back cover). He painfully chronicles and presents countless details in order to hook each candidate's *je ne sais quoi* appeal (or lack thereof). In doing so, he frequently portrays the candidates as naïve or unpolished, key to advancing the author's contention that presidential contenders are somehow different—less adroit—at the beginning of the campaign—and that these differences matter and should be chronicled.

The author seems to forget that his subjects are all seasoned politicians who have honed their appearance, campaign style, abilities, and behavior long before the "invisible primary" (the period Shapiro claims to cover) even begins. All have contested and (with the exception of Al Sharpton) won major elections; Lieberman ran a national vice-presidential campaign in 2000, and Gephardt had even previously run for president. They have been active in public life for decades. These candidates are no rookies, and they certainly did not have to wait until they were knee-deep into a presidential campaign to polish their campaign acumen. The author selectively assembles tidbits of testimony that show that these candidates grapple with decisions, juggle responsibilities, second-guess themselves, dream, hope, have insecurities, and—occasionally—screw up. So what? Does this somehow mean they are—or are not—equipped to be President of the United States? Do these mundane details determine their fate as candidates or their potential as leaders of the free world? Can they help us to compare one against the other? Not necessarily. At most, Shapiro simply shows that presidential candidates are people too.

This book is not destined to find itself on many syllabi (or even recommended reading lists) for political science courses. But it will appeal to campaign enthusiasts and it is sure to "put a smile on the reader's face" (as the author explicitly hopes). The pseudo-biographical sketches of the main characters will satisfy interested readers as personality profiles of the men (albeit not the one woman, Braun) who sought the Democratic presidential nomination in 2004.

COSTAS PANAGOPOULOS
New York University

The Evolution of Presidential Polling *by Robert M. Eisinger. New York, Cambridge University Press, 2003. 228 pp. Cloth, $60.00; paper, $22.00.*

The direct and often unmediated appeals that modern presidents make to the general public have fuelled extensive research. The resulting subfield (known as the "public presidency") has largely focused on centrifugal dynamics—presidents appealing to the general public over the heads of members of Congress and other political actors. For instance, Samuel Kernell argues that changing institutional incentives motivated presidents to increase their travel and speeches; Jeffery Tulis suggests that changing norms of governance unshackled presidents from cooperating with members of Congress and freed them to orally deliver speeches to public audiences in order to stir Americans against recalcitrant Washington elites.

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One of the critical missing links in research on the public presidency has been centripetal dynamics—the ways in which public opinion and actions filtered into the calculations and actions of presidents. Modern presidents are highly strategic. What they say, how they say it, and where they make their comments are the subjects of careful calculation within the White House.

Over the past decade, a growing body of research has shown that modern presidents—beginning in earnest with John F. Kennedy—have routinely used scientific public opinion surveys to track public opinion and to calibrate their appeals to Americans. White House monitoring of public opinion is the flip side of presidential outreach to the mass public.

Robert M. Eisinger's *The Evolution of Presidential Polling* offers the most comprehensive history of presidential polling available. It covers the origins, development, and maturation of presidential polling over the course of more than a century. It uses archival records dating back to the presidency of Herbert Hoover as well as extensive secondary sources on polling, the social sciences, and American historical development.

Professor Eisinger argues that presidents developed private polling in order to assess voter attitudes independently of Congress, political parties, and the mass media. Independent White House measurement of public opinion granted presidents some political autonomy and strategic leeway in their tug of war with legislators, their political party, and the news media.

Perhaps the biggest contribution of *The Evolution of Presidential Polling* to theory and future research is to raise three questions about the significance of presidential polling for democratic governance and institutional development. First, how is White House polling related to presidential efforts to reconcile two potentially conflicting objectives—electoral goals to secure majorities for themselves and their party and policy goals to achieve government decisions that are intensely preferred by their party and campaign supporters? Sophisticated research by James Stimson, Robert Erikson, and Michael McKuen confirms the overriding influence of electoral goals—presidents and other officials respond to the preferences of voters like "antelope." By contrast, Benjamin Ginsberg and others suggest that polling is a tool for pursuing policy goals at minimum political cost while stabilizing the political order by sapping disruptive citizen action. Have historic trends in presidential polling tilted toward using information on public opinion to shape policy in pursuit of electoral goals or to craft personal image and the presentation of already-decided policy to fortify the political order and advance the goals of presidential contributors and party supporters?

Second, Professor Eisinger's evidence that presidents for the past four decades have conducted extensive polling on the attitudes of voters challenges the assumption of much research on American elections and institutions that government officials are hobbled by incomplete information on voters. The critical question for future research is no longer how government officials and presidents cope with imperfect information but rather how they use the rather substantial information they do possess about voter attitudes.

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Third, presidential polling crystallizes an important clash between institutional developments toward rationalization and the political imperative of chief executives to evoke a charismatic following based on their personal features. Although Max Weber saw rationalization and the charismatic individual as at odds in important respects, modern presidents attempt to reconcile the two; they aim to use the institutional capacities and public opinion apparatus associated with their office to induce citizens to perceive the personal traits of a strong, effective, and compassionate leader. The reality, of course, is that much of what the White House and broader executive branch announce as "presidential decisions" are the output of a bureaucratic process based on impersonal processes, written rules, and routinized procedures. The institutionalization of the presidency—which minimizes the exercise of independence, wisdom, and strength by the individual president—increases the political imperative of manufacturing the appearance of alluring personal traits in the individual president. Presidential polling provides the microfoundations for the problematic project of personalizing and instilling a sense of charisma in that which is increasingly bureaucratic.

LAWRENCE JACOBS
University of Minnesota

Information and American Democracy: Technology in the Evolution of Political Power *by Bruce Bimber. New York, Cambridge University Press, 2003. 284 pp. Cloth, $65.00; paper, $22.00.*

The societal and political impact of technology is hardly a new topic in communication studies. However, less common is the introduction of a new theoretical perspective that helps us place new information technology in the context of political change. Bruce Bimber offers that theoretical perspective in his new book. Bimber's thesis is that information technology has helped shape political change in American history over a nearly two hundred-year period of history. Clearly, information technology is but one force among many, but Bimber charts four historical eras of information revolution in American politics from essentially the age of Jackson to the present.

Bimber brings his argument to the present, showing how new technology, particularly the Internet, is creating a context of information abundance. In turn, Bimber argues, information abundance results in postbureaucratic politics. He contends that, thanks to communications technology, the bureaucratic politics characteristic of the mid- to late-twentieth century is being supplemented by less-centralized organizational structures. He devotes most of this section of the book to case studies of the actions of four interest groups, both traditional and new, and a minor political party, the Libertarians. Unfortunately, the sample selection, which was based on finding groups known for their successful use of the Internet to affect public policy, skews the findings somewhat. It might have been more useful to take a random sample of groups in order to examine a more representative cross-section of group use of the Internet.

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The normative take on these developments might be one of encouraging an age of information abundance and its accompanying decentralization. Words of caution are necessary, however. Ostensibly, the individual gains more control over the information supply, but the loss of centralized structures means a higher expectation for individuals to act as independent political actors. The task of finding like-minded individuals with which to associate for collective action on an ongoing basis may be more difficult. Moreover, groups themselves face the daunting task of building coalitions over and over again rather than relying on more lasting associational ties. Shifting coalitions, which replace more permanent organizational structures, run the risk of making the political environment less stable and more unpredictable for the individual as well as for groups. The ability of political elites to communicate with the body politic is reduced significantly as audiences are fragmented among a vast multitude of information sources and variable alliances. In this environment, it is possible that individuals and groups actually could gravitate *toward* centralized structures that could provide order in a disorderly political state.

Bimber avoids the extremes of information technology predictions—either no change or the commencement of the revolution. This book does not predict the demise of centralized structures. Rather, it offers an awkward description—a "revolution in the middle" (p. 229). In other words, the current period will experience the pressures accompanying the rise of information abundance, but the third information revolution stage (1950s–1970s) will not be going quietly into the night. Instead, Bimber suggests, we will see a tension between postbureaucratic forms and the bureaucratic politics upon which American politics has been built for the past half century. Bimber has it right about moderate change. New political actors, such as moveon.org, are competing with existing ones to shape the public agenda and public policy. However, existing political actors are adapting to the new environment, not being replaced by it. The politics of the twenty-first century promises the presence of both, even as they share methods and break down the barriers between old and new forms of politics.

Bimber offers a thesis that is finely tuned and evidence that is fascinating in its in-depth examination of the use of new technology by groups. *Information and American Democracy* is an important book, one that should be read by every student of political communication as well as by those only more casually interested in the political implications of new technology.

RICHARD DAVIS
Brigham Young University

Diminished Democracy: From Membership to Management in American Civic Life *by Theda Skocpol. Norman, University of Oklahoma Press, 2003. 384 pp. $29.95.*

Theda Skocpol begins at a gravestone in rural Maine. The granite slab, erected in 1929, tells the story of one William Dergin: President Lincoln's pallbearer,

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Grange member, Odd Fellow, and officer in the GAR (the Civil War veterans' association). This backwoods farmer practically sprang out of Tocqueville's *Democracy in America*—a proud joiner in a nation rich with civic groups.

Contemporary Americans have lost that participatory spirit. People no longer invest their time or loyalty in civic associations: "I could not quite imagine asking for APSA . . . to be chiseled on my gravestone," quips Skocpol (p. 5). *Diminished Democracy* analyzes what has happened and what we might do about it.

Most importantly, Skocpol explodes the conventional wisdom. The federal government did not suddenly barge in on local communities and snatch away collective problems and shared tasks. On the contrary, traditional civic associations—such as the Grange, the Odd Fellows, and the GAR—were fostered by the federal government, eagerly engaged in national policy debates, and operated as federations on national, state, and local levels.

Skocpol backs up the point with a remarkable roster of associations that claimed at least one percent of all Americans. She tallies twelve by the Civil War, forty by 1900. The vibrant American religious and political competition shaped their organizational form—national federations. *Diminished Democracy* is so persuasive on this historical ground that readers may wonder how so many communitarian scholars have overlooked it and imagined a purely local communal tradition. After all, although Skocpol does not use the term, antebellum historians have long described a "benevolent empire" of evangelical reformers fighting for causes such as temperance (the American Temperance Society organized 8,000 local chapters in a decade), Sabbath observation (prompted by Sunday mail delivery), and abolition. These far-flung federations would not have been possible without the nation's nineteenth-century nervous system, the U.S. postal service.

What happened to all that joining? Here, suggests Skocpol, lies the grain of truth in the conventional wisdom. As government took on complicated new tasks—such as environmental regulation and civil rights enforcement—elites no longer needed to build federations capable of pushing Congress one district at a time. Instead, elites opened Washington offices and lobbied agency staff. Recruiting and participation gave way to fund drives and annual checks.

What to do? Skocpol invites readers to join her in searching for civic renewal. Like any capacious book, this one recasts a familiar problem, raises new questions, and invites us to join the search for answers.

I found myself wondering, for example, about the many rungs of the old federation hierarchies. National elites turned to new organizational forms, but what happened to the old civic rank and file? Are they really still out there eager to join, as Skocpol suggests? Or have their interests also evolved? And what about the local leaders? Hasn't contemporary capitalism buried an entire stratum of prosperous storeowners (squashed by Wal-Mart), bankers (acquired by Chase), small manufacturers (long gone), and local hospitals (closed or merged)? Maybe suburban life makes the job harder (we became a suburban

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nation in 1970, just as the federations began to fold). Or perhaps, more ominously, the race and gender reforms that made segregation in civic federations untenable also made participation in them less desirable.

One could go on and on asking questions prompted by this terrific book. To paraphrase Marx, Theda Skocpol finds the Tocqueville romantics standing on their heads and sets them right. Of course, the conversation about how to fix our civic culture has just begun. But from now on, any serious contribution will have to address the powerful arguments presented in *Diminished Democracy.*

JAMES A. MORONE
Brown University

Madam President: Women Blazing the Leadership Trail *by Eleanor Clift and Tom Brazaitis. New York, Routledge, 2003. 366 pp. Paper, $19.95.*

When will the first female President of the United States take office? In their lively history of the contemporary women's movement, Eleanor Clift and Tom Brazaitis suggest that the answer may be—sooner than we think. There will inevitably be a woman President of the United States and not simply because it is an idea whose time has come. It will happen because, even while the women's movement has been thought to be moribund, a lot of women have been tenaciously working and organizing to accomplish this goal.

Through brief political biographies of women—like Shirley Chisholm, Bella Abzug, and Geraldine Ferraro, who have attained near-icon status—the authors of *Madam President* demonstrate how women learned the political arts of getting organized, raising money, and competing in the media-driven world of election campaigns. As they relate some of the challenges faced by the first women to campaign nationwide and the "learning experiences" of women campaigning against each other, Clift and Brazaitis illustrate how women acquired the wisdom to realize that changing the face of electoral politics would be the work of a generation. They explain how people such as Ellen Malcolm (*EMILY's List*), Barbara Lee (*The White House Project*), and Karen Strickler (*Fifty Plus One*) have applied this skill and wisdom to expand women's legislative presence as they expanded the pool of talent available for the ultimate run.

Clift and Brazaitis understand that the task of electing a woman president is also one of imagination. They describe a popular movie of 1964 in which Polly Bergen plays the elected President and Fred MacMurray the neglected and emasculated First Husband. The traditional gender order is restored when "Madam President" resigns upon discovering she is pregnant. One cannot help but compare this with the true-life story of Jane Swift, who gave birth to twins while serving as Republican Governor of Massachusetts in 2001, but declined to run for re-election because her family needed more attention.

The authors of *Madam President* suggest that "[f]antasy will nudge politics to catch up with real life" (p. xxv) and offer as an example Glenn Close's por-

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trayal of the Vice President in *Air Force One*. However, they do much more to make the leap from imagination to reality by providing a detailed survey of the field of possible contenders. Using a blend of lively interview material and thoroughly documented research on media coverage, they produce compelling portraits of current senators—both those fast becoming the "old guard," such as Barbara Mikulski, Diane Feinstein, Kay Bailey Huchinson, and Elizabeth Dole, and the young and fractious senators, such as Barbara Boxer, Susan Collins, Maria Cantwell, and Mary Landrieu. And then, of course, there's Hillary Clinton, who rightly receives a chapter of her own. Senator Clinton has to be considered the eight hundred-pound gorilla of Democratic women's presidential ambitions; she can run whenever she wants. In fact, in discussions of this book in my women and politics course, students were likely to assume a bid by HRC—some even speculating about the women who might be positioned for a presidential bid *after* Senator Clinton. Clift and Brazaitis provide some insight here by highlighting contenders and notables emerging from the U.S. House and (so far mostly unsuccessful) gubernatorial campaigns.

Madam President has been a very successful addition to the reading list for my seminar on "Women as Voters, Candidates and Leaders." The availability of a paperback edition now makes it more attractive as a supplement for general courses in American politics dealing with presidential elections or with leadership. By focusing on women's acquisition of organizational, financial, public relations, and other electoral skills, Clift and Brazaitis help to expand the cultural conception of "leader" and provide a bridge across the generations.

KATHLEEN KNIGHT
Barnard College and Columbia University

The Cult of the Nation in France: Inventing Nationalism, 1680–1800 *by David A. Bell. Cambridge, MA, Harvard University Press, 2003. 304 pp. Cloth, $46.00; paper, $18.95.*

France is universally regarded as an early and influential case of nationalism, although scholars differ on its essential meaning—for example, civic nationalism for Rogers Brubaker, collectivist authoritarian nationalism for Liah Greenfeld. Yet, broad-brush comparative typologizing may fail to capture conflicts over the character of nationalism and its historical dynamics within given countries. David Bell's erudite and richly documented study combines rigor and richness in highlighting the diverse origins of French nationalism in the pre-Revolutionary period.

Bell's analysis of voluminous material published beginning in the late seventeenth century persuades him that French nationalism originated far earlier than the years immediately preceding the Revolution. Consequently, he claims, contrary to Benedict Anderson's influential argument, "the essentializing of ethnic and racial differences in fact began at the center as much as it did at the

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(perceived) periphery" (p. 104). *The Cult of the Nation* describes diverse intellectual currents dating from the 1780s that nourished nationalist sentiment: monarchs and their retainers, who played (or, rather, invented) the nationalist card in order to mobilize subordinates to serve royal military ambitions; thinkers for whom nationalism could provide answers to ultimate questions when the capacity of Catholicism to do so was shrinking; and Enlightenment philosophers, who advanced a secular and republican project to compete with the traditional vision offered by the Church and monarchy. For clues to understanding the growth of nationalism, he mines literature on religion, the lives of great Frenchmen (he notes that memorialists did not believe that, other than Joan of Arc, there were any great French women), national festivals, language issues, and international conflicts (notably, with Britain).

The monarchy plays a key role in the drama. Bell might have paraphrased Charles Tilly's aphorism that war makes states and states make war. In Bell's account, French monarchs invented nationalism the better to make war—especially the Seven Years' War, in which the anti-French exploits of British military officer George Washington inflamed French patriotic passions—while war helped make French nationalism. Louis XIV and his successors promoted nationalism by hiring publicists to publish pamphlets, books, and periodicals lauding "*la nation*" and "*la patrie.*" But although monarchs "imagined" nationalism in order to enhance their power, the *ancien régime* was eventually destroyed when the nationalist genie escaped from the bottle. Bell claims that this was no accident. He sees an elective affinity, in France and elsewhere, between secular republicanism and nationalism. (He quotes Robespierre's famous declaration to the National Convention in 1792: "Louis must die because the *patrie* must live.") To which one might reply that the countless cases of religious nationalist movements in the contemporary world (both those that control states and those that aspire to) suggest otherwise.

Bell concludes his rich exploration of French nationalism by claiming that the essential underpinning of the French nationalist project, a zeal to "to assimilate new populations and to put France at the center of a universal civilization, [has] virtually evaporated" (p. 212). Bell is not the first to observe that the secular republican project dominant since the Great Revolution has lost its appeal—although the recent controversy over the display of religious symbols in French schools suggests the need for caution in writing the epitaph for France's republican-secular nationalism. But does this signify the end of nationalistic ideology? Hardly, as witness Jean-Marie Le Pen's exclusionary inward-looking nationalist project (an alternative to secular republicanism) that continues to enjoy considerable support (reaching far beyond the National Front's sizeable electoral following).

Bell focuses on the transformation of ideas, culture, and self-conceptions. He rarely seeks to identify the mechanisms, such as institutions, technology, and agents, by which ideas of French nationalism exerted influence. The exceptions occur in his treatment of the Third Republic, a period he studies in less depth

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than the eighteenth century. He follows others in highlighting the critical role of schoolteachers as "republican missionaries," dispatched to the hinterland to proselytize republican values, as well as the conscript army, that he regards as a key instrument of national integration. Moreover, he does not analyze the extent and character of the resistance that the secular republican nationalist project encountered. But, although Bell does not deal with some important questions, *The Cult of the Nation in France* is a splendid contribution to French intellectual history and a rich case study of how nationalism has been imagined and constructed.

MARK KESSELMAN
Columbia University

Strategic Dilemmas and the Evolution of German Foreign Policy Since Unification *by Jeffrey S. Lantis. Westport, CT, Praeger, 2002. 248 pp. $64.95.*

This book deals with the development of German foreign policy in the post-Cold War era. During the Cold War, Germany—or what was then West Germany—had little power to carry out an independent foreign policy. Ever mindful of its past, Germany had no real desire to flex its muscles with the kind of nation-state independence often exerted by France, Great Britain, and the United States. Germany was an embedded nation committed to a Westphalian world of political and economic unity, just as its leaders, throughout the Cold War and after, were united in their view that multilateral diplomacy within international institutions constituted the only legitimate path to global peace and security.

After reunification, these traditional commitments were expected to intensify and to do so in the direction of a greater role in world affairs. After all, the new Germany, by any standard a major world power, would now be prepared, or so it was assumed, to respond more aggressively to international crises and, in particular, to employ its armed forces in multilateral efforts to keep the peace. But as this book points out, public values and political conditions inside Germany have limited the Federal Republic's ability to participate in internationally sanctioned peacemaking or peacekeeping activities. The public values include a political culture hostile to any revival of German militarism, while the country's deeply consensual democracy complicates the making of foreign policy in the absence of broad agreement within and between parties.

In short, this book argues that German foreign policy making depends on the confluence of three major factors, namely, elite consensus, party politics, and public support. It merits scholarly attention because of its focus on the role these factors play in explaining Germany's response to five international crises that confronted political leaders in the 1990s. These crises—the author

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calls them "strategic dilemmas"—include Iraq's invasion of Kuwait, the humanitarian intervention in Somalia, the civil war in the former Yugoslavia (1991–1994), the struggle to keep the peace in Bosnia (1994–1999), and the upheaval in Kosovo following Serbia's suspension of the region's political autonomy. Separate chapters are devoted to each crisis, covering its historical background, the response of transnational institutions, the international pressure on Germany to get involved, the domestic restraints inhibiting such action, and the political and legal strategies for and against German involvement. Each of these phases receives careful treatment, providing readers with lucid descriptions of Germany's foreign policy-making process.

Each crisis, the author argues, presented Germany with an opportunity to reshape its foreign policy by assuming more responsibility on the world stage. In each case, multilateral institutions —notably the UN and NATO—had sanctioned military intervention. But German leaders were caught in "strategic dilemmas," requiring them to make hard choices between conflicting demands of continuity and change in German military policy. In Kuwait, and later in Somalia and Yugoslavia, political elites were even divided over whether German soldiers should participate in UN-sponsored peacekeeping missions or whether Germany should respond to NATO's call for military participation in missions beyond NATO's borders. Additionally, constitutional values came into play, as they decidedly do in Germany's obsessive legal culture, inhibiting elites from acting until a measurable consensus is reached on the legal issues and until public attitudes are significantly aligned with elite opinion. The author spends a great deal of time describing the dynamics of this consensus-building process.

Of course, anyone familiar with coalition politics in Germany will not be surprised by this book's findings. In concluding, however, I'd like to suggest that this book is worth reading in light of the American-led invasion of Iraq. The author would surely agree that this event confronted Germany with perhaps its most serious strategic dilemma ever. Although the book was published after the event, it helps to explain Germany's reluctance to join the invading coalition and its willingness actively to oppose, for the first time, a major foreign policy decision of the United States.

DONALD P. KOMMERS
University of Notre Dame

The Emergence of Mass Politics in Spain: Populist Demagoguery and Republican Culture, 1890–1910 *by José Alvarez-Junco. Portland, OR, International Specialized Book Service, Inc., 2003. 196 pp. Cloth, $59.50; paper, $24.95.*

José Alvarez-Junco presents a fascinating description of the complex changes in the Spanish political system at the birth of the twentieth century, employing

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a biographical treatment of the central character of the period, Alejandro Lerroux, a populist politician intent on stimulating participatory democracy in an environment long dominated by clerical, monarchical, and oligarchical interests. Alvarez-Junco deftly peels back the political and cultural underpinnings of the political system in order to provide the reader with a full understanding of the situation in the run-up to the Spanish Civil War some thirty years later.

Some will wonder at the efficacy of, or at least the payoff from, Alvarez-Junco's use of semiotic, linguistic, and psychological analyses to convey his main arguments, but using these approaches, he is able to highlight, particularly in Chapter 6, the importance of the political rhetoric employed by Lerroux. Alvarez-Junco seeks to integrate a biographical treatment of Lerroux with a socio-political analysis of this period in Spanish history, for which he finds the politician a "thoroughly representative product" (p. viii). He moves from a description of the role that Lerroux played in the defense of political prisoners, through his demagogic success in Barcelona and in parliamentary politics, his involvement in the schemes of anarchists, and finally, to the decline in his political reputation between 1906 and 1908 as the conflict with Catalan nationalists emerged.

Alvarez-Junco is quick to admit that his book is not "total history," having left to others such important topics as the plight of workers in a country in serious economic crisis; nor is it a traditional biography. In some ways it is precisely his combination of these two traditions, in alternating chapters, together with insights from modern social science, that makes the book both innovative and effective as explanation.

The author may be at his best and is most convincing in Chapter 5, as he describes the "national trauma" of the Spanish-American War of 1898, and particularly the failure of the republican movement to take advantage of the events and the defeat to push for decisive political reform and modernization. Trapped in their own nationalist impulse and disparagement of the upstart United States and its motives, the republicans offered no effective alternative as a response to the trauma and "accepted a traditional, ethnically based view of Spanish history in which all historical events were seen as the inevitable result of national character. After a defeat such as that of 1898, the only logical conclusion was that the Spanish race was degenerating and military dictatorship alone could avert the nation's eclipse" (p. 87).

Alvarez-Junco is also effective in his analysis of the fall of Lerroux and his movement, as they became marginalized with the electoral success of Solidaridad Catalana in the April 1907 general election. Lerroux made the "mistake" of attacking Catalanism, which developed an irresistible momentum. This led to his political isolation and expulsion from Catalonia. He was therefore exiled to Argentina during the events of Barcelona's "tragic week" in July of 1909. The anarchist insurrection in response to war in Morocco gained momentum with anticlericalist elements, but it was repressed brutally, leading

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to a clear halt in the process of political reform. Many supporters of reform became alarmed at the violence and disorder. The hard work of Lerroux to seek change through political participation in elections and parliament was firmly pushed aside. He was never again trusted by the right and was banned from Spain after the Civil War.

Alvarez-Junco concludes with an effort to speak more broadly about populism and mass politics. One could ask him to be more comparative and expansive in his treatment of the lessons of Lerrouxism for understanding political movements more generally. He does have some interesting things to say about populism, and in particular, on the most appropriate strategies for the analysis of populist movements. Here he returns to his pitch for the merits of discourse analysis, but clearly tempers this view with a recognition of the need to incorporate multidisciplinary approaches to understanding leadership, organization, and the dynamics of political mobilization.

The author also uses the final chapter to sketch the remaining years of Lerroux's life in the context of the rise of fascism. He speculates about how things might have turned out differently and makes a plea for understanding Lerroux and Spanish politics in part as a struggle for nationalist affirmation and political legitimacy in Europe. He teases out a series of interesting thoughts on the role of Lerroux and his movement in broadening political participation in authoritarian Spain that could well provide some guidance for the wide range of Eurasian regimes undergoing political and economic transition since the end of the Cold War.

NORMAN A. GRAHAM
Michigan State University

Machiavelli's Children: Leaders and Their Legacies in Italy and Japan
by Richard J. Samuels. Ithaca, NY, Cornell University Press, 2003. 456 pp. $39.95.

At the heart of this book lies a simple but arresting question: given similar historical circumstances, how did Italy and Japan develop such divergent political, economic, and social systems? Both countries were late-comers to industrialization and political unification; both experimented with parliamentary democracy before succumbing to authoritarianism; both met destruction in the Second World War; and both played a subordinate role to the United States after 1945. But no two countries could be more distinct. Like Neil Simon's Oscar Madison and Felix Unger, "Italy seems more the undisciplined, slightly anti-authoritarian and insouciant Oscar, Japan more the disciplined, neurotically fastidious Felix" (p. xi).

MIT professor of political science and veteran Japan-hand Richard Samuels locates the critical difference in specific choices made by key political and economic leaders over the last century and a half. Italian statesmen built a modern

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polity centered on parliamentary politics and open to foreign investment, while their Japanese counterparts erected a bureaucratic state that welcomed foreign technology but rejected international finance. Italian politicians met the social dislocations of industrialization with liberal social policies, while Japanese party leaders preferred accommodation with the state over expanded political rights. Japan crafted an effective industrial policy and new tradition of corporate paternalism, while Italy remained laissez-faire on government-business ties and in labor politics. Italian "fascism" was a reaction to the earlier failure of corporatism in Italy, whereas its Japanese cousin built upon the bureaucratism and corporatism of modern Japan's founders. Italy returned after 1945 to political and economic factionalism, while Japan constructed new traditions of bureaucratism and corporatism.

The novelty here lies in the stress upon individual agency and historical contingency. Italy and Japan failed to converge institutionally not because of fundamentally divergent cultures but because of critical choices made by a roster of dynamic individuals. From Count Camillo Benso di Cavour to Silvio Berlusconi, Ito Hirobumi to Ishihara Shintaro, we get a fascinating glimpse of a dozen key leaders in each country and the decisions that changed history. Samuels's description of social, political, and economic norms as products of human "invention" resonates nicely with recent attempts by historians to expose the "invented" character of indigenous "traditions" and strikes another powerful blow against cultural determinism.

Can we ultimately believe that the modern trajectory of two states rests upon the decisions of two dozen men? Both Count Cavour and Ito Hirobumi were, no doubt, exceptional and influential leaders. But there are, in fact, significant historical differences between Italy and Japan that are difficult to slight. Emerging from a confederation of semiautonomous feudal domains loosely regulated by one feudal lord (for example), Ito and his cohorts had no concerns regarding the two most pressing fears of Italy's founders, absolute monarchy and ecclesiastic power. In their quest for modernity, therefore, Japanese statesmen, one might argue, erred on the side of centralization and bureaucratization.

One could also contest Samuels's choice of personalities. Hara Takashi nicely represents the failure of some Japanese party politicians to pursue liberal reform. But to ignore Hara's rival, Kato Takaaki, whose Kenseikai party transformed Japanese politics in the late 1920s through universal male suffrage, arms reductions, and nonintervention in China, is to perpetuate the old saw about "sham" democracy before 1945 and, ironically (given Samuels's interest in contingency), to deny the possibilities of the age.

It is, of course, easy to quarrel with the details of a study as sweeping as this. But students of Italy, Japan, and comparative politics will benefit from this bold new comparison, as rich in thought-provoking contrasts (including a delightful set of political cartoons from both countries) as it is striking in concept.

FREDERICK R. DICKINSON
University of Pennsylvania

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Alternatives to Hitler: German Resistance Under the Third Reich *by Hans Mommsen. Princeton, Princeton, NJ, University Press, 2003. 320 pp. $29.95.*

Resistance to constituted authority is perhaps the most paradoxical of all political phenomena. Generally an extreme act propelled by undoubtedly strong convictions and a sense of urgency, it often prompts agonizing ambivalences. The more stringent the oppression, the more ambivalent the resistance. This is borne out by the history of twentieth-century totalitarianism, which was dictatorship with, as well as against, the people, conjuring up a national consensus by means of propaganda and terror.

The Nazi dictatorship, the subject of Hans Mommsen's latest book, is a case in point. The ugly totalitarian consensus that prevailed in the Nazi regime was fostered by the weakness of Germany's democratic traditions and the all too ready assumption that parliamentary democracy was played out. While the German masses hailed the *Führer* wholeheartedly, many other Germans went along with the regime despite grave reservations through want of persuasive alternate positions. Besides, there were those few who resisted.

Of course, resistance is always undertaken by minorities. But even the German minorities found themselves in an ambiguous situation, as though there was no clear divide between resistance and cooperation. The cold fact is that in Nazi Germany the only chance for resisting effectively was to work from within the establishment.

These thoughts were elicited by my reading of Mommsen's work. To be sure, the Communists did present a radical alternative to Nazism and were from the very start ready to sacrifice themselves for their beliefs. Despite their own totalitarian wrongheadedness, they still await integration into the story of the *Widerstand* (Resistance). Indeed, their alternative to Hitler was a distinct one, however pernicious, but there was no ambivalence on their part.

The extreme left is represented in Mommsen's work by Carl von Ossietzky, the editor of the radical left-wing *Die Weltbühne*, who for his uncompromisingly antimilitarist views got into deep trouble with both the Weimar and the Nazi regimes. Here was the case of a man who stood up for his convictions come what might. Discussing von Ossietzky, Mommsen is able to examine the absence in the German constitutional tradition of any provision recognizing a natural law of resistance. Mommsen can also expand on the traditional German "obsession with legality," which led to acceptance of the authority of the state even if, as clearly was the case under the Nazis, it was criminal. Even the German noncommunist workers' movement was informed by the need to stay within the bounds of legality lest the regime have a pretext for taking action against it.

The distinctive mark that Hans Mommsen has developed on Resistance studies is his revision of the image of the *Widerstand* left by Hans Rothfels, who, along with Gerhard Ritter, was the first to study it. For Rothfels, its legacy was essentially an ethical one. It was conscience that propelled its members

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to rise up against Hitler, and their resolve and ethos were to be a shining example for posterity. But Mommsen, taking this dimension for granted, asks a hard political question: what was the political legacy of the *Widerstand* for the Germans after Hitler? In this respect, he finds the resisters on the whole wanting. Their social and constitutional horizons, he argues, were essentially authoritarian or else nourished by romantic neo-conservative notions and not in tune with the requirements of the modern industrial society. In short, resisters cannot, according to Mommsen, serve as models for the citizens of the German Federal Republic.

The last chapter of the book deals with the difficult subject of the resisters' attitude towards the persecution of the Jews. It is excellent in its balanced and honest acknowledgement of the long distance travelled by the greater part of the conspirators: from a traditional, if not—in some instances—militant, anti-Semitism to an understanding of the criminality of a genocidal regime that must be opposed.

Ambiguity, then, was inherent the situation in which the *Widerstand* had to operate, and ambivalence characterized many of its members. In the end, however, they were resolved by the deed which was heroic and which deserves being highlighted in the annals of history. Hans Mommsen has done well by recording it so straightforwardly. His study is important for an understanding of modern Germany as well as of the bedevilling features of modern totalitarianism.

KLEMENS VON KLEMPERER
Smith College

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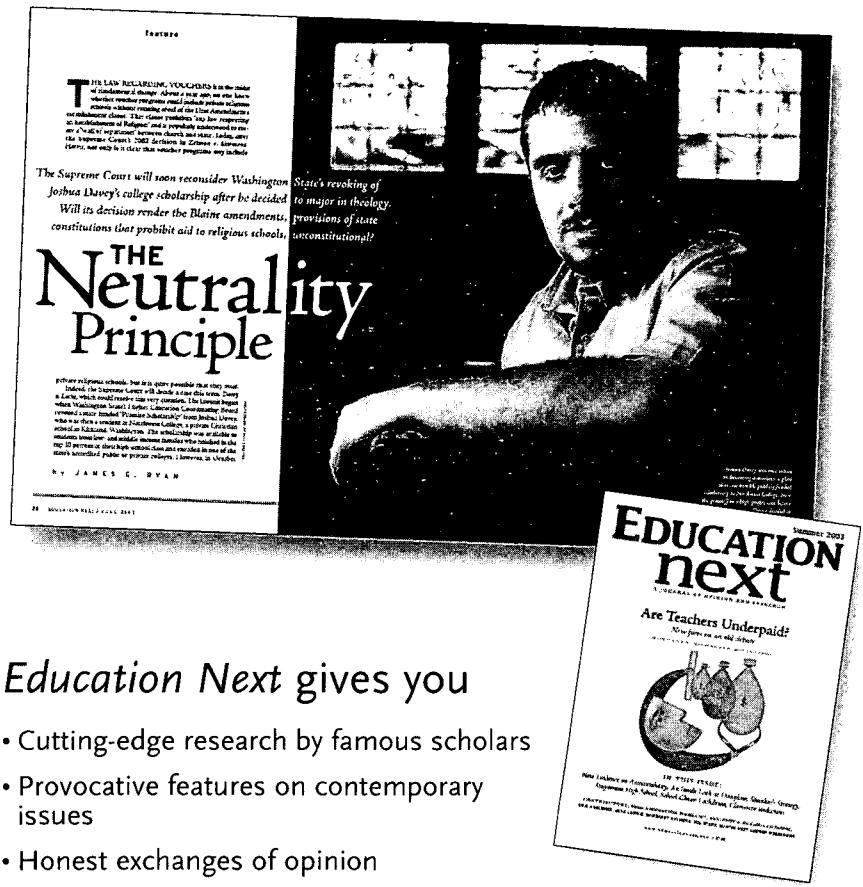
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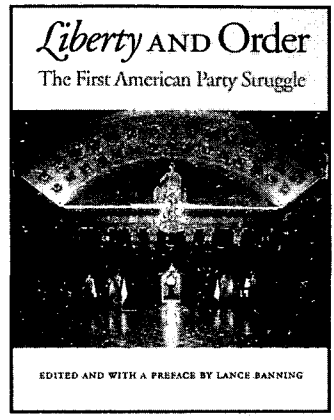

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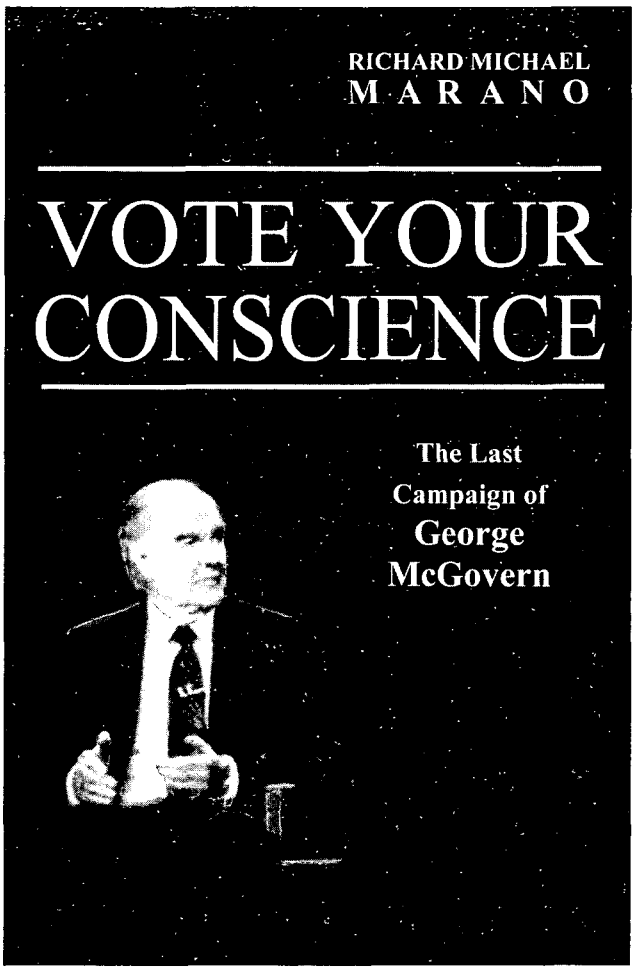

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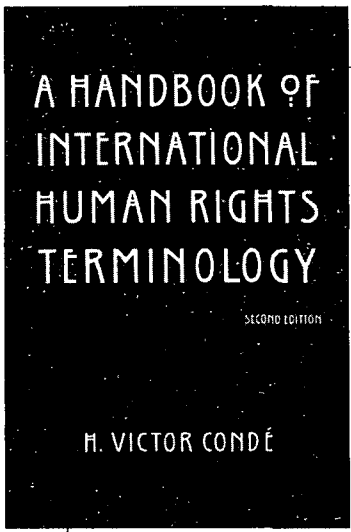

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PREVENTIVE WAR, IRAQ, AND IMPOSING DEMOCRACY

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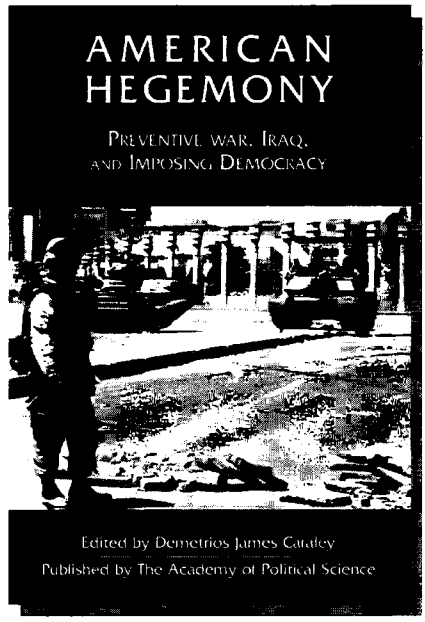

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